SUPREME COURT OF THE UNITED STATES.

No. 276.

MOSES WARING, PLAINTIFF IN ERROR,

vs.

THE MAYOR, ALDERMEN, AND COMMON COUNCIL OF THE CITY OF MOBILE, JONES M. WITHERS, MAYOR, AND JOHN PARHAM, TAX COLLECTOR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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To the honorable, the Judges of the Supreme Court of Alabama:

Your petitioner, Moses Waring, a citizen of the city of Mobile, and State of Alabama, respectfully shows that heretofore, on the 26 June, 1866, he filed his bill of complaint in the Court of Chancery at Mobile, for the first district of the southern chancery division of the State of Alabama, against the mayor, aldermen, and common council of the city of Mobile, Jones M. Withers, mayor of said city, and John Parham, tax collector of said city, and prayed, among other things, a perpetual injunction against corporate authorities of the city of Mobile, its officers and agents, to restrain from the collection of a certain tax by them demanded, under an ordinance of said city, which was alleged to be passed in pursuance of a certain act of the general assembly of the State of Alabama, approved 2d February, 1866, entitled an act to incorporate the city of Mobile, from your petitioner, on the gross amount of the sales in Mobile, of certain foreign salt, claimed by your petitioner to have been imported by him into the State of Alabama, from the kingdom of Great Britain, and which he had sold in the original packages by wholesale, unbroken, in the same form and condition as imported into the State of Alabama from said kingdom of Great Britain. Your petitioner, by his said bill, drew in question the validity of the said authority claimed by said city authorities to tax said sales, and the said act of the general assembly of the State of Alabama, because the same was repugnant to the Consitution of the United States, article 1, section 10, paragraph 2, and article 1, section 8, paragraph 3, and to the laws of the United States, passed in pursuance of said Consitution of the United States.

And such proceedings were thereon had, that a perpetual injunction as prayed by petitioner was granted and decreed by said Court of Chancery.

Your petitioner shews that an appeal was taken by said defendants to the Supreme Court of Alabama, the highest court of law or equity in said State of Alabama, in which a decision could be had in the said suit, and such proceeding was therein had, that on the 4th day of June instant, the said Supreme Court of Alabama rendered its judgment reversing the decree of said Court of Chancery, and then and there rendered a final decree in said suit, and dismissed the said bill of your petitioner, at his cost in said Supreme Court and said Court of Chancery and thereby rendered its decision in favor of the validity of said authority claimed by the said city of Mobile, and of said act of the general assembly of the State of Alabama, which had been drawn in question in said suit.

Whereby the case has arisen wherein your petitioner is entitled to a writ of error to the Supreme Court of the United States, in order to a review of said decision of said Supreme Court of Alabama, as provided by the 25 section of the act of Congress entitled, to establish the judicial courts of the United States, approved September 24, 1789; wherefore your petitioner prays that a writ of error may be allowed to

him in the premises, according to the terms of the act of Congress in such case made and provided, returnable to the next term of the Supreme Court of the United States, and as in duty bound, &c.

MOSES WARING,
June 7, 1867. By P. HAMILTON, *his Atty.*

Petition granted and allowed, June 10th, 1867.

A. J. WALKER,
C. J. Sup. Ct., Ala.

Endorsed: Moses Waring *vs.* Mayor, Aldermen and Common Council of the city of Mobile, *et al.* Petition for writ of error. Filed June 10th 1867. Jno. D. Phelan, Clerk. Examined and allowed, June 1867.

b UNITED STATES OF AMERICA, *ss*:

The President of the United States to the honorable the Judges of the Supreme Court of the State of Alabama, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Alabama, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Mayor, Aldermen, and Common Council of the city of Mobile, Jones M. Withers, and John Parham, appellants, and Moses Waring, appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decison was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Moses Waring, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-six.

[SEAL.] LAWRENCE WORRALL,
Clerk of the Circuit Court of the United States,
for the fifth circuit and southern district of Alabama.

(50 ct Rev. Stamp)

Allowed by A. J. Walker, Chief Justice of the Supreme Court of Alabama, this 10th day of June, 1867.

A. J. WALKER,
C. J. Sup. Ct., Ala.

Endorsed: Moses Waring *vs.* The Mayor, Aldermen, and Common Council of the city of Mobile *et al.* Writ of error to the Supreme Court, U. S. Filed June 10th 1867. Jno. D. Phelan, clerk &c.

c The United States of America, to the Mayor, Aldermen, and Common Council of the city of Mobile, Jones M. Withers, John Parham, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of Alabama, wherein Moses Waring is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Abram J. Walker, Chief Justice of the Supreme Court of the State of Alabama, this 10th day of June, in the year of our Lord one thonsand eight hundred and sixty-seven.

A. J. WALKER, *C. J.*

On this 22nd day of July, in the year of our Lord one thousand eight hundred and sixty-seven, personally appeared Henry T. Gains before me, the subscriber, who is deputy sheriff of the county of Mobile, and State of Alabama, and makes oath that he delivered a true copy of the within citation to Gustavus Horton, Mayor of the city of Mobile, for said corporation, and to Jones M. Withers and John Parham.

HENRY T. GAINS.

Sworn to and subscribed the 22nd day of July, A. D. 1857.

W. W. D. TURNER,
Commissioner for the southern dist. of Ala.

Rec'd 17, July, 1867, and on the same day I served copies of the within citation in error on G. Horton, Mayor of the city of Mobile.

and John Parham, and on the 22d day of July, 1867, I served a copy of the within citation in error on Jones M. Withers.

M. D. GRINNELL,
Sheriff of Mobile County.
By HENRY T. GAINS, *D. S.*

Endorsed: Moses Waring *vs.* The Mayor, Aldermen, and Common Council of the city of Mobile, *et als.* Citation in Error.

[Copy.]

Know all men by these presents, that we, Moses Waring and Lewis T. Woodruff, of Mobile, are held and firmly bound unto the mayor, aldermen, and common council of the city of Mobile, Jones M. Withers and John Parham, in the full and just sum of five thousand dollars, lawful money U. S., to be paid to the mayor, aldermen, and common council of the city of Mobile, Jones M. Withers and John Parham, certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 7th day of June, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas, lately at a term of the Supreme Court of Alabama, begun and held on the first Monday of June, 1867, in a suit depending in said court between the mayor, aldermen, and common council of the city of Mobile *et al.*, and Moses Waring, a decree was rendered, dismissing a bill in equity by him against said parties, and for costs, was rendered against the said Moses Waring and James Crawford, his security upon his injunction bond; and the said Moses Waring having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the decree in the aforesaid suit, and a citation directed to the said mayor, aldermen, and common council of the city of Mobile, Jones M. Withers and John Parham, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now the condition of the above obligation is such, that if the said Moses Waring shall prosecute his said writ of error to effect and answer all damages and costs, if he fail to make his said plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) MOSES WARING. [SEAL.]
L. T. WOODRUFF. [SEAL.]

Sealed and delivered in presence of—

Approved by A. J. WALKER,
C. J. Sup. Court, Alabama.

THE STATE OF ALABAMA, *Mobile County:*

I, P. La Vergy, Clerk of the City Court of Mobile, do hereby cer-

tify that Moses Waring and L. T. Woodruff, whose names are subscribed to an appeal bond for obtaining a writ of error from the Supreme Court of the State of Alabama, to the Supreme Court of the United States, in the case of the Mayor, Aldermen, and Common Council of the city of Mobile, against the said Moses Waring, are personally known to me, and to be worth more than five thousand dollars each.

In testimony whereof, I hereunto set my hand and the seal of the court, this 8th day of June, 1867.

[SEAL.] (Signed) P. LA VERGY, *Clerk.*

[$1 State tax on seal, canc'l'd.]

I, John D. Phelan, Clerk of the Supreme Court of Alabama, hereby certify that the foregoing, on pages 1 and 2, is a true, perfect, and complete copy of the original writ of error bond filed in my office on the 10th day of June, 1867, and approval of same in a cause wherein Moses Waring is plaintiff in error, and the Mayor, Aldermen, and C. C. of Mobile *et al.*, are defendants, which said bond is now on file in my office.

Witness: JNO. D. PHELAN, *Clerk.*

Endorsed: Sup. Ct. U. S. No. 276. (Copy.) Moses Waring *vs.* Mayor, Aldermen, and Common Council of the city of Mobile *et als.* Writ of error bond. Filed June 10th, 1867. Jno. D. Phelan, clerk, &c. Filed 4th Dec'r, 1867.

1 Be it remembered, that at a term of the Supreme Court of Alabama, begun and held at the capitol, in the city of Montgomery, on Monday, the third day of June, in the year one thousand eight hundred and sixty-seven, (A. D. 1867,) there were present and presiding as judges of said court, Honorable Abram J. Walker, Chief Justice; Honorable Wm. M. Byrd, associate justice; Honorable Thomas J. Judge, associate justice, before whom the following proceedings were had to wit:

There was filed in the office of the clerk of said court, on the 26th day of February, A. D. 1867, the following transcript of the record and proceedings in the case of Moses Waring, complainant, and the Mayor, Aldermen and Common Council of Mobile and others, defendants, from the Chancery Court of Mobile County, in said State, in the words and figures following, to wit:

A transcript of the records and proceedings had in a certain cause, heretofore pending in the Court of Chancery, at Mobile, wherein Moses Waring is complainant, and Mayor, Aldermen, and Common Council of Mobile and others, defendants.

Original Bill.

To the hon. the Chancellor of the southern chancery division of the State of Alabama, presiding at Mobile:

1. Your orator, Moses Waring, respectfully shows to your honor,

and John Parham, and on the 22d day of July, 1867, I served a copy of the within citation in error on Jones M. Withers.

M. D. GRINNELL,
Sheriff of Mobile County.
By HENRY T. GAINS, *D. S.*

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(Signed) MOSES WARING. [SEAL.]
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Approved by A. J. WALKER,
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tify that Moses Waring and L. T. Woodruff, whose names are subscribed to an appeal bond for obtaining a writ of error from the Supreme Court of the State of Alabama, to the Supreme Court of the United States, in the case of the Mayor, Aldermen, and Common Council of the city of Mobile, against the said Moses Waring, are personally known to me, and to be worth more than five thousand dollars each.

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Witness: JNO. D. PHELAN, *Clerk.*

Endorsed: Sup. Ct. U. S. No. 276. (Copy.) Moses Waring *vs.* Mayor, Aldermen, and Common Council of the city of Mobile *et als.* Writ of error bond. Filed June 10th, 1867. Jno. D. Phelan, clerk, &c. Filed 4th Dec'r, 1867.

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There was filed in the office of the clerk of said court, on the 26th day of February, A. D. 1867, the following transcript of the record and proceedings in the case of Moses Waring, complainant, and the Mayor, Aldermen and Common Council of Mobile and others, defendants, from the Chancery Court of Mobile County, in said State, in the words and figures following, to wit:

A transcript of the records and proceedings had in a certain cause, heretofore pending in the Court of Chancery, at Mobile, wherein Moses Waring is complainant, and Mayor, Aldermen, and Common Council of Mobile and others, defendants.

Original Bill.

To the hon. the Chancellor of the southern chancery division of the State of Alabama, presiding at Mobile:

1. Your orator, Moses Waring, respectfully shows to your honor,

that he is a citizen of Alabama, resident in Mobile, and is a tax payer in said city.

2. Your orator further shows to your honor, that the mayor, aldermen, and common council of the city of Mobile, which is a municipal corporation, created by the laws of the State of Alabama, have recently, to wit, on or about the day of 1866, the pre-
2 cise date of which is unknown to your orator, under a pretended power alleged to be derived from an act of the general assembly of the State of Alabama, entitled, "An act to incorporate the city of Mobile," approved 2d February, A. D. 1866, have assessed, and are pretending to collect from the merchants and traders of Mobile, a tax of 50 cents upon each and every one hundred dollars gross proceeds of the sales of merchandise made by him or them, from and after the first day of January, 1866. That by an ordinance of said corporation, passed on the day of 1866, the precise date of which is unknown to your orator, they require all persons who have been engaged in the sale of any marchandise at private, or auction sales, during the six months, or two quarters preceeding said first day of April, 1866, to give, under oath, to the city tax collector the gross amount of such sales for said time, within fifteen days after notice from said tax collector, and declare that the person failing or refusing to do so shall be subject to such fine as the mayor, or acting mayor, may impose for each days failure or refusal. Subsequently, to wit: on day of 1866, the date of which is unknown, said ordinance was so amended as to limit the fine or penalty to $50 per day.

3. Your orator further shows, that on and before and since the said 1 January, 1866, your orator has carried on in Mobile the business of selling salt, the product of countries foreign to the United States, and to the State of Alabama; his said business has been confined to the sale of said salt to traders or dealers, in the original packages, as the same were imported into the port of Mobile from said foreign countries; his said sales have not been to consumers, and have been in unbroken original packages; these transactions compose the only sales of merchandise made by your orator in the city of Mobile.

4. His manner of business has been as follows: he purchased the said foreign salt, which is of English manufacture, and brought from the port of Liverpool by the cargo, and of the foreign shipper
3 thereof, either at sea, on the voyage of importation, or before the voyage of importation is completed, and before the hatches of the vessel on which it is laden are opened, or bulk broken, and before the cargo is entered at the custom-house, for payment of duty. He receives said salt from the vessel on which it is brought from said foreign producing country in the bay of Mobile, and before the same comes within the limits of the city of Mobile; and himself causes said merchandise to be brought into the city, and placed in store for sale, as aforesaid, and furnishes the money to pay the duties thereon. In this mode and manner all the business of orator, with regard to the receipt and sale of salt, has been carried on by him since 1 Jan-

uary, 1866. The gross sales thereof from said date to 1 April, 1866, have been forty thousand and thirty-three 61-100 dollars. Your orator charges that his said business is not subject to the tax sought to be imposed thereon by the said mayor, alderman, and common council of the city of Mobile, and said tax is illegal and oppressive.

5. Your orator shows that John Parham, who is the city tax collector, gave notice to persons subject to said tax to make report to him of the amount of their gross sales; said notice was given by public advertisement in a newspaper published in the city of Mobile, and not by any personal service. Your orator therefore, notified said tax collector of the nature of his business, and of his claim of exemption from said tax, because his said business was not properly the subject of State legislation, until his liability was judicially determined, and has been at all times ready to unite in any form of trial that might be suggested to test his said liability in case his said claim were disputed or denied.

6. Your orator shows, that notwithstanding his said business is properly subject alone to the legislation of the United States government, and has been thereby regulated, and of the facts herein stated, all of which were well known to the said Parham, tax collector, and to Jones M. Withers, mayor of the city of Mobile, the said Parham and Withers, holding the offices aforesaid, have pro-
4 ceeded to enforce upon your orator the collection of the tax aforesaid, and have insisted, and still insist, that orator is amenable to the jurisdiction in this matter of the said city corporation; that said Withers, mayor aforesaid, on the 23d June, inst., caused your orator to be arrested and brought before him as mayor, and in his capacity of mayor, under the charter of the city, and under the pretended authority therein alleged to be contained, did enter against your orator a fine of fifty dollars, and is proceeding to enforce payment of the same, and further threatened that he would, from day to day, adjudge against him further daily fines of fifty dollars for each and every day that your orator refused or failed to submit to the jurisdiction claimed over him as aforesaid; that again on the 26 June, inst., said Withers again caused your orator to be brought before him as aforesaid, and again adjudged against him an additional fine of fifty dollars, and threatens to continue from day to day to inflict a similar fine daily, till he submit to the unlawful jurisdiction claimed by said mayor for said corporation of Mobile; and orator verily believes said Withers will proceed to execute his illegal threat, and that your orator will be subject to a multiplicity of suits [of suits] in order to defend himself against these injurious acts of said public officers. Your orator has appealed from said judgments entered against him in his court by said mayor, to the City Court of Mobile, and has been compelled to furnish bond and security therefor to prevent the seizure and sale of his property under these illegal and unjust judgments by the mayor, and that to protect him against the illegal threats of further fines by said mayor Withers, as aforesaid, the law can give him no adequate relief.

7. Your orator charges that said acts are illegal, and the authority

under which they are pretended to be sustained find no sanction in the laws of the land; wherefore, your orator prays that your honor will take jurisdiction of his case, that Jones M. Withers, mayor, John Parham, tax collector, and the Mayor, Aldermen and Common Council of the city of Mobile, may be made defendants to the bill of complaint. That writs of subpœna may issue to them, directed according to the rules of this court, that they may answer the allegations hereof, and abide and perform the decree your honor may make in the premises.

Your orator prays that said defendants may set forth and discover the authority, both of law and ordinance, on which they pretend to exercise this power and perform the acts herein complained of, and may set forth copies of all the proceedings against your orator; that said defendants may be forever enjoined from collecting the judgments aforesaid, rendered by the said mayor against him; that said defendants be forever enjoined from attempting to collect the tax so as aforesaid claimed of your orator upon the sales of merchandise hereinbefore described; and the same be declared illegal and void in the premises, and for such other or further relief as the nature of his case may require, and be consistent with equity and good conscience, and as in duty bound he will ever pray, &c.

HAMILTONS, *Sols. Comp.*

[50 cent stamp.]

Comes Moses Waring, above named, who being duly sworn on his oath, saith the allegations in the foregoing bill of complaint contained are true.

MOSES WARING.

Subscribed and sworn to before me, this June 26, 1866.

WILLIAM BROOKS,
Justice Peace, M. C.

[5-ct. stamp.]

AT CHAMBERS, MOBILE, ALA.,
June 26, 1866.

Upon the complainant executing a bond in the sum of twenty-five hundred dollars, with sureties to be approved by the register, payable to the mayor, aldermen, and common council of the city of Mobile, and conditioned as prescribed in sec. 2,975 of the code, let an injunction issue in accordance with the prayer of the bill.

(Signed) N. W. COCKE,
Chancellor, So. Div.

Filed, June 26th, 1866.

JNO. M. TAYLOR, *Register.*

Bond.

THE STATE OF ALABAMA, *Mobile County:*

Know all men, that we, Moses Waring, as principal, and James

Crawford, his surety, are held and firmly bound unto John M. Taylor, register in chancery, in the just and full sum of twenty-five hundred dollars, for the faithful payment of which said sum, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 26th day of June, A. D. 1866.

The condition of this obligation is such, that whereas, the above bound Moses Waring has this day exhibited in our Court of Chancery, for the first district of the southern chancery division of said State, his bill of complaint against the Mayor, Aldermen, and Common Council of the city of Mobile, and John Parham, tax collector, praying among other things for an injunction restraining them, said defendants, from collecting the fines adjudged by Jones M. Withers, the mayor of said city, against the said complainant, of fifty dollars each, which judgments were rendered on the 23 and 26 day of June, 1866, respectively, and to enjoin said defendants from collecting or attempting to collect the tax of 50 cts. upon each and every one hundred dollars gross proceeds of the sale of merchandise made by him, said complainant, from and after the first day of January, 1866, &c.

And whereas, said complainant has obtained on his said bill the requisite order for the issuance of such injunction upon his giving bond, &c.

Now, therefore, if the above bound Moses Waring shall pay all damages which any person may sustain by the wrongful issuance of said injunction, if the same is dissolved, then this obligation
7 to be null and void, otherwise to be and remain in full force and effect.

MOSES WARING. [SEAL.]
JAS. CRAWFORD. [SEAL.]

Approved and filed June 26, 1866.

JNO. M. TAYLOR, *Register.*

Injunction.

The State of Alabama, first district southern chancery division.

To Jones M. Withers, mayor of the city of Mobile, the Mayor, Aldermen, and Common Council of the city of Mobile, and John Parham, tax collector of said city, greeting:

Whereas, Moses Waring, of the city of Mobile, in said State, has this day exhibited in our Court of Chancery for the district and division aforesaid, his bill of complaint against you, praying among other things for an injunction, to enjoin and restrain you from collecting the fines adjudged by Jones M. Withers, the mayor of said city of Mobile, on the 23 and 26 day of June, 1866, against the said complainant, and further to enjoin and restrain you from attempting to collect the tax of fifty cents upon each and every one hundred dollars gross proceeds of the sales of merchandise made by him, said complainant, from and after the 1 day of January, 1866, &c.

And, whereas, the said complainant has obtained on his said bill

the requisite order for the issuance of such injunction, and has given bond with approved security, as therein required:

Now, therefore, you and each of you, are hereby strictly enjoined and restrained from collecting the judgments aforesaid rendered by the mayor against the complainant, and also from attempting
8 to collect the tax so as aforesaid claimed of complainant upon the sale of merchandise as aforesaid, until the further order of this honorable court, and this our writ of injunction you shall in no wise disobey under the pains and penalties of the law in such case made and provided.

Witness, John M. Taylor, register of said court of chancery, and the seal thereof, this 26 day June, A. D. 1866.

JNO. M. TAYLOR, *Register.*

Sheriff's Return.

Rec'd, June 26, 1866, at 6 o'clock p. m., and on the same day at 6 o'clock and 20 minutes p. m., I served a copy of the within injunction on John Parham, city tax collector; on the same day at 7 o'clock and 20 minutes p. m., I served a copy of the same on Jones M. Withers, mayor of the city of Mobile.

M. D. GRINNELL,
Sheriff of Mobile City.
By JEROME ESLAVA, *D. S.*

Subpœna.

THE STATE OF ALABAMA, *Mobile County:*

In chancery, first district southern division.

To the Mayor, Aldermen, and Common Council of the city of Mobile, Jones M. Withers, mayor, and John Parham, tax collector, greeting:

We command you, that within thirty days from the service of this writ of subpœna upon you, you appear and plead to, or answer a bill of complaint filed in our Chancery Court, for the first district of the southern chancery division, against you, defendants, by Moses Waring, complainant, (a copy of which bill of complaint will be furnished you by the register if desired,) and that you appear
9 before the honorable the said Court of Chancery, to be holden at the court-house of the county of Mobile, on the 4th Monday of January, A. D. 1866, and that you further do and observe what said court shall direct in this behalf, under the pains and penalties prescribed by law, and in such case made and provided.

Witness, J. M. Taylor, register of said court, and the seal thereof, at office, this 26 day of June, A. D. 1866.

Attest:

JNO. M. TAYLOR, *Register.*

To any sheriff of the State, greeting:

We command you that you execute this process agreeably to law, and have the same, with your return thereon, at our next Chancery Court, to be holden as aforesaid.

Witness my hand and the seal of said court, this 26 day of June, A. D. 1866.

Attest:

JNO. M. TAYLOR, *Register.*

Sheriff's return.

Rec'd, June 26, 1866, and on the same day I served copies of the within subpœna, in chancery, on Jno. M. Withers, mayor of the city of Mobile, and John Parham, city tax collector of said city; also, on the 27 day of June, 1866, I served a copy of the same on Caleb Price, president of the board of aldermen of the city of Mobile.

M. D. GRINNELL, *Sh'ff, M. C.*
By J. ESLAVA, *D. S.*

Answer of Mayor, Aldermen, &c.

The joint and several answer of Jones M. Withers, mayor of the city of Mobile, and of the Mayor, Aldermen, and Common Council of the city of Mobile, defendants, to the bill of complaint of Moses Waring.

These defendants, now and at all times hereafter, saving and reserving to themselves, and each one of them, all rights and benefits of exception to complainant's bill of complaint, for answer thereto, say:

10 1. They admit that complainant is a citizen of Alabama, resident in Mobile, and they suppose a tax payer in said city.

2. They admit that the mayor, aldermen, and common council of the city of Mobile, which is a municipal corporation, created by the laws of the State of Alabama, by an ordinance hereinafter mentioned, laid a tax of 50 cents upon each and every one hundred dollars of gross amount of sales of merchandise sold in the city of Mobile, from and after the 1 January, 1866, and are proceeding to collect the same of and from all merchants and traders of said city who have given in their said sales in compliance with said ordinance. And respondents insist that the mayor, aldermen, and common council had, and have full power and authority to levy and collect such tax under section 37 of the act of the legislature of Alabama, entitled "An act to incorporate the city of Mobile," approved February 2, 1866, referred to by complainant.

That on the 21 day of March, 1866, they adopted an ordinance, making it a duty of the city tax collector, as soon as practicable after the issuance of the mayor's warrant, for the collector of the city taxes to give notice for ten days, in the official journal of the city, requiring all persons who have sold, or who may have been engaged in the sale of any merchandise, at private or auction sales, during the two quarters preceding the 1 April, 1866, to come to the office

of the city tax collector, and give in, under oath, the gross amount of his sales, as provided for by the city charter, and making it the duty of every person so selling, or engaged in selling, as aforesaid, during said six months, or two quarters preceding the 1 day of April, 1866, to give in, under oath, to the city tax collector, the gross amount of such sales for said time, within fifteen days after said notice, and upon his failure or refusal to do so, making him subject to such fine as the mayor or acting mayor may impose for each day's failure or refusal, and further making it the duty of every person so selling, or engaged in the sale of merchandise in said city, after the 1 day of
11 April, 1866, to appear before the city tax collector, and within ten days after the public notice given by him, and give in, as before, the gross amount of his sales for each preceding three months, and making him punishable as before for his failure or refusal; a copy of which ordinance is hereto appended, and made a part of this answer, marked Exhibit "A."

On the 9 day of May, 1866, they adopted another ordinance, amending said aforerecited ordinance, by requiring the gross amount of sales of merchandise to be given in for one quarter, instead of two quarters, before the 1 day of April, 1866. A copy of which ordinance is hereto appended, made a part of this answer, marked Exhibit "B."

And on the 15th of June, 1866, they adopted another ordinance, further amending the first-recited ordinance, by making the fine not exceeding fifty dollars for refusal or failure to give in the gross amount of sales; a copy of which ordinance is hereto appended, made a part of this answer, and marked Exhibit "C."

All of which ordinances remain unrepealed and of force.

3. Respondents admit that complainant has carried on the business of selling salt in the city of Mobile since the 1 January, 1866, but they do not know, and therefore do not admit that said salt is altogether the product of countries foreign to the United States, and the State of Alabama, or that his business has been confined to the sale of said salt, to traders or dealers, in the original packages, as the same were imported into the port of Mobile from foreign countries; or that his said sales have not been to consumers, and have been in unbroken original packages; or that these transactions compose the only sales of merchandise made by complainant in the city of Mobile, and so far as the said statements or allegations may be material, or affect the right and interests of these respondents, they require strict proof of the same.

4. Respondents know nothing of their own knowledge of complainant's manner of business, as alleged in the 4 paragraph of his
12 bill, and they require strict proof of the same.

They deny that said complainant purchased said salt at sea, or the voyage of importation, or before the voyage of importation is completed; but, on the contrary, they are informed, and believe, and state, that the complainant purchases said salt, brought from the port of Liverpool, of the foreign shippers, or consignees thereof, after the ship or ships upon which it is laden arrives within the port or harbor of Mobile, with the intention of unloading the same; these

respondents have caused inquiry and examination to be made in the records of the custom-house in Mobile, and state the entry of said salt at the said custom-house in Mobile for the payment of duties, is not made by the complainant, but by the consignees thereof, and that the consignees thereof pay the duties thereon, and are the persons who are allowed a credit therefor in said custom-house; so that these respondents in fact deny that complainant is an importer of said salt, and that his said business, and the gross amount of his sales of said salt, are not subject to the tax sought to be imposed thereon by the mayor, aldermen, and common council of the city of Mobile, and that said tax is illegal and oppressive.

5. Respondents admit that John Parham, the city tax collector, in compliance with the ordinance heretofore referred to, marked Exhibit "A," did give notice, by public advertisement in the Mobile Daily Advertiser and Register, that being the official journal of the city, to all persons subject to said tax, to give in, under oath, the gross amount of their sales from the 1 January, 1866, a copy of which advertisement is hereto attached, marked Exhibit "D," and made a part of this answer; that the said complainant, refusing to give in the gross amount of his sales, did notify the said tax collector of the nature of his business, and of his claim of exemption from said tax; but these respondents do not know whether complainant has, or not, been at all times ready to unite in any form of trial that might be suggested to test his said liability.

6. Respondents insisting that the said business of complain-
13 ant is not properly subject alone to the legislation of the government of the United States, and that it has not been thereby regulated, and insisting that the gross amount of the sales of merchandize made by complainant is subject to said tax, and that complainant is amenable to the jurisdiction of the city corporation for his refusal or failure to give in to the tax collector the gross amount of his sales, as required by the ordinance aforesaid; deny that said Parham and respondent, Withers, have proceeded to enforce upon him the collection of any tax.

Respondents state the facts to be as follows: The complainant having been notified that he was required to give in, under oath, to the city tax collector the gross amount of his sales of merchandise in the city of Mobile since the 1 day of January, 1866, refused for fifteen days after said notice so to do; this refusal having been reported by the said Parham, city tax collector, to respondent, Withers, as mayor of said city, said respondent, as such mayor, caused a summons to be issued and served by the proper officer of said city on said complainant, commanding him to be and appear before him, as such mayor, on the 22 day of June, 1866, at 9 o'clock a. m., at the Mayor's Court; and said complainant having refused to obey said summons, and having treated the same with contumacy, respondent, Withers, did cause him to be brought before him, as mayor of the city, and as the judicial officer thereof, presiding in the Mayor's Court of said city, on the 23 day of June, 1866; and after hearing the evidence in the matter, did impose upon said complainant a fine of fifty dollars for a

breach of said ordinance, hereto attached, marked Exhibit "A;" and did order and direct the chief of police of the city of Mobile to bring complainant before him each and every day that he violated said ordinance by refusing to give in his sales as aforesaid. Said complainant having refused for another day, and still refusing to give in said gross amount of sales, and said refusal having been reported on oath by the tax collector to respondent, Withers, he, said Withers, did, as before, cause complainant to be brought before him, on the 26 of June, 1866, and did, as mayor, as aforesaid, upon trial had, impose a fine of fifty dollars against said complainant for the 14 said second breach of said ordinance.

Respondents deny that said respondent, Withers, on either of said days, threatened to adjudge against, or inflict upon complainant further daily fines of fifty dollars for each and every day that he refused or failed to submit to the jurisdiction claimed over him; said respondent only directed, as before stated, that complainant be brought before him as often as, and each day that he violated the said ordinance of the city, which it was the duty of said mayor to enforce and execute, as well against the complainant as against all others in the city of Mobile, subject thereto.

In all these proceedings that respondent, Withers, and the said Parham, acted alone in their official capacity as mayor and tax-collector of the city of Mobile; and these respondents insist that said proceedings were regular, and in accordance with the ordinances of the city of Mobile and the laws of Alabama.

Complainant did take an appeal from said judgments to the City Court of Mobile, and was required, in compliance with the laws in such cases made and provided, to give bond and security, in the usual form, to obtain such appeal. The appeals are now pending in the City Court, undetermined.

A copy of all the proceedings had in the Mayor's Court, as aforesaid, is hereto appended, made a part of this answer, marked Exhibit "E."

7. Respondents deny that said acts were illegal, and that the authority under which they are sustained finds no sanction in the law, but on the contrary, they insist that they were had and done in strict compliance with the law, and that said respondents and the said Parham had full authority for all they have done in he premises.

And having fully answered, pray to be hence dismissed, with their reasonable costs, &c.

And before the filing of said answer, the defendants demur to said bill of complaint, and assign the following grounds of demurrer, viz.:

1. Said bill is multifarious, in uniting two distinct and sepa-
15 rate matters, to wit: The proceedings against complainant for a violation of an ordinance of the city, and his liability to a tax on the gross amount of his sales.

2. Because it seeks to enjoin and obtain relief against proceedings had before the mayor of the city of Mobile, and judgments rendered by said mayor against complainant for a breach or violation of an ordinance of said city.

3. Because complainant has a complete and adequate remedy at law.

4. Because the subject matter of said bill concerns other tax payers of the city of Mobile, and should not be filed in complainant's name and on his own behalf alone.

5. Because the bill shows that the said complainant is liable to the tax on the gross amount of sales of merchandise made by him in the city of Mobile since the 1 day of January, 1866.

6. Because said bill claims that said complainant is exempt from, or not liable to said tax, because the goods sold by him were imported from a foreign country, and does not allege or show that he was the importer thereof.

7. Because it shows that he was not the importer.

8. Because it does not show or allege that the city authorities have laid or assessed, or threatened to levy and assess, any tax upon imported goods in his hands.

9. Because it does not show that any tax has been assessed against complainant at all.

10. Because the bill contains no equity.

J. M. WITHERS,
MAYOR, ALDERMEN & COMMON COUNCIL OF THE CITY OF MOBILE,
By J. M. WITHERS, *Mayor.*
S. S. SUMMERS.
W. S. BOYLES.
SMITHS. & HERNDON,
Sol's for Def'ts.

16 Before me comes Jones M. Withers, in his own behalf, and as the mayor of the city of Mobile, in behalf of the Mayor, Aldermen and Common Council of said city; who, after being by me first duly sworn, saith: The matters and things set forth in the foregoing answer, so far as the same are stated on his own knowledge, are true, and those stated on information and belief, he believes to be true.

Sworn to and subscribed before me by said Withers, for himself, and as the mayor, for the Mayor, Aldermen and Common Council, attaching at the same time the corporate seal of the city of Mobile.

July 13, 1866.

[SEAL.] J. M. WITHERS.
JNO. M. TAYLOR, *Register.*

Exhibit "A."

CITY CLERK'S OFFICE,
MOBILE, *Feb.* 14, 1866.

To the Hon. J. M. WITHERS, Mayor, GEORGE A. KETCHUM, President C. C., CALEB PRICE, President B. A.:

GENTLEMEN: I respectfully notify you that the city assessor has this day returned into my office the assessment lists for the year 1866, according to law.

Respectfully,

(Signed) WHITFIELD TURNER,
City Clerk.

Received February 14, 1866, and on the same day notified the above named parties.

S. CHARPENTEER,
Chief of Police.

MAYOR'S OFFICE,
MOBILE, *Feb.* 16, 1866.

In obedience to the foregoing notice, the Court of Assessment, consisting of Hon. Jones M. Withers, Mayor, George A. Ketchum, President of Board of Common Council, and Caleb Price, Presi-
17 dent of Board of Aldermen, met this day at 7 p. m., in the mayor's office.

The court having organized, agreed upon and adopted the following rate of assessments for the year 1866, to wit:

Municipal tax on real estate at the rate of one and one-half per cent. on each hundred dollars, and on all personal property, gross sales of merchandise, sales at auction, as well as all other sales, capital and income, at the rate of one per cent. on each hundred dollars.

Attest: (Signed) WHITFIELD TURNER,
City Clerk.

ALDERMEN'S CHAMBER,
MOBILE, *March* 15, 1866.

The board of aldermen met this evening at 7½ p. m.

The city clerk having notified this board that the books of assessment had been examined, and the rates of taxation fixed by the Court of Assessment for the year 1866, and by that court approved, as provided for by the ordinance now in force; and the said proceedings being now submitted for the consideration and ratification of this board,

Alderman Overall moved to amend by fixing the rates of taxation on gross sales of merchandise, sales at auction, and all other sales, capital and income, at the rate of fifty cents on each hundred dollars, from the 1 of October, 1865, to the April 1, 1866, and thereafter, at one dollar on each hundred dollars.

Which was carried.

Attest: (Signed) WHITFIELD TURNER,
City Clerk.

COUNCIL CHAMBER, CITY OF MOBILE.
March 16, 1866.

The board met this day at 4½ p. m., pursuant to a call of the president.

The action of the board of aldermen on the proceedings of
18 the Court of Assessment, fixing the rates of taxation for the year 1866, came up for consideration.

Councilman Jones moved to amend the action of the board of aldermen, by striking out so much of the amendment of Aldermen Overall, as fixes the rate at one dollar from and after the first day of April

next, and to insert in lieu thereof, that the rate of taxes on sales of merchandise, sales at auction, and all other sales, capital and income, be fixed at the rate of fifty cents on the hundred dollars.

Which amendment was adopted.

On motion, it was resolved, that the proceedings of the Court of Assessment, as amended, be in all things ratified, confirmed, and approved by this board.

(Signed) N. WICKS, *C. C.*

ALDERMEN'S CHAMBER, CITY OF MOBILE,
March 17, 1866.

The board of aldermen met this evening at 7½ o'clock p. m., pursuant to a call from the president.

Action of the common council on the proceedings of the Court of Assessment, reducing the rate of taxation on gross sales of merchandise, sales at auction, and all other sales, capital and income, to fifty cents on each hundred dollars, was taken up.

Alderman Miller moved that the board recede from its previous action.

Which was carried.

Alderman O'Connell moved to concur in the action of common council, which was carried, on the following vote, Alderman Grady calling for the ayes and nays:

Ayes—Pres'd't Price, Alderman Budgett, A. Brooks, W. Brooks, Dane, Lyons, Overall, O'Connell, and Riley—9.

Nays—Aldermen Grady, Leinkauf, Miller, McGuire, Mc-
19 Donald and Weems—6.

The proceedings of the court, as amended, were then, on motion, in all things ratified, confirmed, and approved by the board.

Attest: (Signed) WHITFIELD TURNER,

Approved: (Signed) J. M. WITHERS, *Mayor.*

An ordinance to provide for the assessment and collection of taxes and revenues.

* * *

SECTION 15. It shall be the duty of the city tax collector, as soon as practicable, after the issuance of the mayor's warrant for the collection of the city taxes, to give notice, for ten days, in the official journal of the city, requiring all persons who have sold, or who may have been engaged in the sale of any merchandise at private or auction sales, during the two quarters preceding the 1 of April, 1866, to come to the office of the city tax collector and give in, under oath, the gross amount of his sales of merchandise and auction sales, as provided for by the city charter, and he shall give the like notice every three mos. thereafter, to ascertain the gross amount of such sales for every preceding quarter.

Every person selling, or who has been engaged in the sale of any merchandise at private or auction sales during said six months, or two quarters preceding said 1 April, 1866, shall give in, under oath,

to the city tax collector, the gross amount of such sales for said time, within fifteen days after said notice, and failing or refusing to do so, shall be subject to such fine as the mayor or acting mayor may impose for each day's failure or refusal.

It shall be the duty of every person selling or engaged in the sale of merchandise in said city, after said 1 of April, 1866, to appear before the city tax collector, and within ten days after the public notice given by him, as above provided for, and give in, under oath, the gross amount of his sales of merchandise and auction sales for each three preceding months, and every one failing or refusing to do so, shall be fined in such sum as the mayor or acting mayor may impose for each day's failure or refusal.

And any person giving in any false or fraudulent amount of such sales, with intent to defraud said city out of any portion of the revenue derived therefrom, is guilty of perjury, and shall be convicted in the manner, and suffer the penalty prescribed by law for that offense.

* * *

Approved 21 day of March, 1866.

Exhibit "B."

An ordinance to amend an ordinance entitled "An ordinance to provide for the assessment and collection of taxes and licenses," approved 21 March, 1866.

Sec. 1. Be it enacted, That section fifteen of the ordinance to provide for the assessment and collection of taxes and licenses, be amended by striking out the words "two quarters," where they appear in the first and second paragraphs of said section, and insert in lieu thereof the words "one quarter," and also strike out the word "six," where it appears in the second paragraph of said section, preceding the word month, and insert in lieu thereof the word "three." The intent of these amendments being to repeal so much of said ordinance as requires the collection of the tax of one-half of one per cent. on gross sales of merchandise for the months of October, November, and December, 1865.

Approved 9 day of May, 1866.

Exhibit C.

An ordinance to amend an ordinance entitled "An ordinance to provide for the assessment and collection of licenses and taxes," approved 21 March, 1866.

Be it ordained by the mayor, aldermen, and common council of the city of Mobile, That the ordinance to provide for the assessment and collection of taxes and licenses, approved March 21, 1866, be and is hereby so amended as to add after the word "refusal," in the second and third paragraphs of section fifteen, and also after the word "refusal," at the end of paragraph nineteen, the following words "not exceeding fifty dollars."

Approved June 15, 1866.

Exhibit "D."

MUNICIPAL BUILDINGS, TAX COLLECTOR'S OFFICE,
MOBILE, *March* 20, 1866.

Notice to city tax payers.

The tax list for the present year, 1866, having been completed by the assessor, and the mayor having issued his warrant to me for the collection of the same, all persons are hereby admonished, that I am prepared to receive the same, and that they are requested by law to pay said city taxes within sixty (60) from the date of this notice.

Additional notice is given to all persons who have sold, or may have been engaged in the sale of any merchandise at private or auction sale, during the two (2) quarters preceding the 1 of April, 1866, to come to the office of the city tax collector on the 2 day of April next, and give in the gross amount of their sales as provided for by law.

(Signed) JOHN PARHAM, *C. T. C.*

22 *Exhibit "E."—Summons.*

STATE OF ALABAMA, *City of Mobile:*

To the chief of police or any police officer of the city of Mobile:

You are hereby commanded to summon Moses Waring to appear before me on the 23 day of June, 1866, at the mayor's office of the city of Mobile, to answer the charge of failing or refusing to give in to the city tax collector, his gross sales of merchandise for the quarter or three months preceding the 1 of April, 1866, as required by the charter and ordinance of said city, when you will then and there make return of this summons.

Issued Mobile, June 21, 1866.

(Signed) J. M. WITHERS,
Mayor.

Endorsement on same.

Rec'd June 21, 1866, and on the same day served the same, by notifying Moses Waring to appear at the mayor's court-room on the 22 inst., at 9 o'clock a. m., and also tendering the within notice to said Waring to read which he refused to do.

(Signed) JACOB RICHARDS.

Warrant.

To any police officer of the city of Mobile, greeting:

You are hereby commanded to arrest and bring before me, J. M. Withers, mayor, or any one of the aldermen or common counsel, at 9 o'clock a. m., on the 23 day of June, 1866, Moses Waring, charged

with failing or refusing to give in to the city tax collector his gross sales of merchandise. Herein fail not and have you then and there this precept.

(Signed) J. M. WITHERS, *Mayor*,

23 *Endorsement.*

Executed the 22 day of June, 1866.

(Signed) THOS. M. PHILLIPS.

N. B.—This warrant was issued upon the complaint and oral affirmation of John Parham, which affirmation was in substance the same as the affidavits made in the subsequent arrest.

Affidavit.

STATE OF ALABAMA, *Mobile County:*

This day personally appeared before me, John Parham, tax collector of the city of Mobile, who having been duly sworn, doth declare, that in pursuance with the laws in relation to the tax on gross sales of all merchandise sold at auction or private sales within the limits of the city of Mobile, he has given due and proper notice to all whom it may concern, to deliver to him, under oath, the gross amount of sales of all merchandise sold during the quarter ending 31 March, 1866, and commencing January 1, 1866, as required by law. That Mr. Moses Waring, a commission merchant, doing business in the city of Mobile, has and does still refuse and neglect to give in the gross amount of sales made by him during said quarter ending 31 March, 1866, and this, although he has had repeated notice that it is incumbent on him so to do, and that the period has elapsed which he is allowed before rendering himself liable to the pains and penalties prescribed by law.

(Signed) JOHN PARHAM.

Sworn to and subscribed before me, this 25th June, 1866.

(Signed) J. M. WITHERS,
Mayor City of Mobile.

Warrant.

To any police officer of the city of Mobile, greeting:

You are hereby commanded to arrest and bring before me,
24 J. M. Withers, mayor, or any one of the aldermen or common council, at 9 o'clock a. m., on the 26 day of June, 1866, Moses Waring, charged with failing or refusing to give in to the city tax collector his gross sales of merchandise for the 1 quarter, year 1866.

Herein fail not, and have you then and there this precept.

(Signed) J. M. WITHERS, *Mayor.* [L. S.]

Endorsement.

Served the within on Moses Waring this 25 day of June, by handing to the said Waring, and he, reading the same, promised to attend the Mayor's Court in the 26 at the hour of 9 o'clock.

Signed) THOMAS M. PHILLIPS.

Affidavit.

STATE OF ALABAMA, *Mobile County:*

This day personally appeared before me, John Parham, tax collector of the city of Mobile, who having been duly sworn, doth declare, that in pursuance with the laws in relation to the tax on gross sales of all merchandise sold at auction or private sale within due limits of the city of Mobile, he has given due and proper notice to all whom it may concern, to deliver to him, under oath, the gross amount of sales of all merchandise sold during the quarter commencing January 1, 1866, and ending March 31, 1866, as required by law. That Mr. Moses Waring, a commission merchant, doing business in the city of Mobile, has and does still refuse and neglect to give in the gross amount of sales made by him during said quarter ending 31 March, 1866, and that the period has closed which he is allowed before rendering himself liable to the pains and penalties prescribed by law.

(Signed) JOHN PARHAM.

Sworn to and subscribed before me, this 26 day of June, 1866.

(Signed) WM. M. LOOMIS,
J. P. M. C.

25 *Warrant.*

To any police officer of the city of Mobile, greeting:

You are hereby commanded to arrest and bring before me, J. M. Withers, mayor, or any one of the aldermen or common council, at 9 o'clock a. m., the 27 day of June, 1866, Moses Waring, charged with failing or refusing to give in to the city tax collector, his gross sales of merchandise for the 1 quarter year, 1866.

Herein fail not, and have you then and there this precept.

(Signed) J. M. WITHERS, *Mayor.* [s.]

Endorsement.

Served the within on Moses Waring, this 26 day of June, by handing to the said Waring, and he reading the same, and he, said Waring, promised to attend the Mayor's Court on the 27, at its usual hour, 9 o'clock.

(Signed) THOMAS McPHILLIPS.

Transcript from Mayor's docket.

1866. June 21. Moses Waring failing or refusing to give in to the city tax collector his gross sales of merchandise for the 1 quarter year, 1866, fined by mayor, $50. Appealed to City Court by giving bond on file.

T. McPhillips and J. Richards arresting officers, Jno. Parham. Compt.

June 26 Moses Waring failing or refusing to give in to the city tax collector, his gross sales of merchandise for the quarter year, 1866, fined by mayor $50. Appealed to City Court by giving bond on file.

T. McPhillips and J. Richards arresting officers, Jno. Parmim, Compt.

26 *Bonds.*

THE STATE OF ALABAMA:

Know all men by these presents, that we, Moses Waring and James Crawford, are held and firmly bound unto the mayor, aldermen, and common council of Mobile, in the sum of one hundred dollars, for the which payment well and truly to be made to the said mayor, aldermen, and common council of the city of Mobile, we do hereby bind ourselves, and our heirs and assigns, jointly and severally, firmly by these presents. Sealed with our seals, and dated 23 day of June, in the year of our Lord, one thousand eight hundred and sixty-six.

The condition of this obligation is such, that whereas the above bounden Moses Waring has, on the day of the date of these presents, claimed an appeal to the City Court, next to be held in and for the county of Mobile, in the State aforesaid, at the next term, 1866, thereof, from a judgment rendered on the 23d day of June, 1866, by J. M. Withers, esq., mayor of the city of Mobile, and ex-officio justice of the peace in and for the said county, in favor of the said city for fifty dollars and cents debt, besides costs of suit, and has obtained said appeal; now if the said Moses Waring shall prosecute said appeal to effect, and abide by and perform the judgment of the said Appellate Court in the premises, then this obligation to be void, otherwise to remain in full force and virtue.

(Signed) MOSES WARING. [s.]

Sealed and delivered in presence of—
J. W. CRAWFORD. [s.]

THE STATE OF ALABAMA:

Know all men by these presents, that we, Moses Waring and James Crawford, are held and firmly bound unto the mayor, alderman, and common council of the city of Mobile, in the sum of one hundred dollars, for which payment well and truly to be paid to the said
27 mayor, aldermen, and common council of the city of Mobile, we do hereby bind ourselves and our heirs and assigns,

jointly and severally, firmly by these presents. Sealed with our seals, and dated the 26th day of June, in the year of our Lord one thousand eight hundred and sixty-six.

The condition of this obligation is such, that whereas the above bounden Moses Waring has, on the day of the date of these presents, claimed an appeal to the City Court next to be held in and for the county of Mobile, in the State aforesaid, at the next term, 1866, thereof, from a judgment rendered on the 26 day of June, 1866, by J. M. Withers, esq., mayor of the city of Mobile, and ex-officio justice of the peace in and for said county, in favor of the said city for fifty dollars and cents, debt, besides costs of suit, and has obtained said appeal; now if the said Moses Waring shall prosecute said appeal to effect, and abide by, and perform the judgment of the said Appellate Court in the premises, then this obligation to be void, otherwise to remain in full force and virtue.

(Signed) MOSES WARING. [s.]

Sealed and delivered in presence of—
J. W. CRAWFORD. [s.]

Filed 14 July, 1866.

JNO. M. TAYLOR,
Register.

Answer of J. Parham.

The separate answer of John Parmam, city tax collector of the city of Mobile, to the bill of complaint of Moses Waring against the Mayor, Alderman, Common Council, J. M. Withers and John Parham.

The defendant now and at times hereafter, saving and reserving to himself all right and benefit of exception to the complainants said bill of complaint, for answer thereto, or to so much thereof as he is advised is material to make answer unto, says—

28 1. He admits that he is the city tax collector for the city of Mobile; that as such tax collector, he gave public notice in the Advertiser and Register, the official journal of the city of Mobile, to all persons who have been engaged in the sale of merchandise in the city of Mobile, to come to the office of the tax collector on the 2 April, 1866, and give in, under oath, the gross amount of his sales, &c. A copy of said notice is hereto attached, marked Exhibit "A," and is made a part of this answer; that respondent met the complainant in the street, about one month after said notice was given, and told him that he wished him to give in the amount of his gross sales of merchandise, which complainant said he would not do, that he was not bound to render an account of his gross sales, except from the date of the passage of the ordinance, requiring the gross amount of sales to be given in to the tax collector. Respondent informed complainant that he would report him to the mayor of the city of Mobile for refusing to give in the gross amount of sales as required. This was all that passed between complainant and respondent at the time.

Respondent denies that complainant at that time, or before that time, notified respondent of the nature of his business, and his claim to exemption from said tax, because his said business was not properly the subject of State legislation, until his liability was judicially determined.

2. Respondent does not know whether complainant has, or has not been, at all times ready to unite in any form of trial that might be suggested to test his said liability.

3. Respondents says, that on the day of May, 1866, be reported, under oath, the complainant to Jones M. Withers, the mayor of the city of Mobile, for failing and refusing to give in the amount of his gross sales of merchandise as required; that afterwards, to wit, on 18 day of June, 1866, respondent received a note, signed by complainant, a copy of which is hereunto attached, marked 20 Exhibit "B," and is made a part of this answer; that said note contains all, and the only information respondent ever received from the complainant as to the nature of his business.

4. Respondent says that afterwards, to wit, on the 21 day of June, 1866, respondent is informed that a summons was issued by Jones M. Withers, as mayor of the city of Mobile, requiring the complainant to come before him, and show cause why he should not give in the gross amount of his sales of merchandise, as required, from the 1 day of January, 1866, to the 31 March, 1866.

That afterwards, to wit, on the 23 June, respondent was notified to appear before Jones M. Withers, mayor of the city of Mobile, against said complainant, respondent appeared and was examined as a witness upon the trial, and among other things testified that respondent was city tax collector for the city of Mobile, and that complainant had been notified to give in to respondent the gross amount of his sales of merchandise, for the quarter ending 31 March 1866, and that complainant had failed and refused to do so.

5. Respondent insists that the said business of complainant is not properly subject alone to the legislation of the government of the United States, and that it has not been thereby regulated; and insists that the gross proceeds of the sale of merchandise made by complainant are subject to said tax, and that complainant is amenable to the jurisdiction of the city corporation for his refusal to make the respondents as city tax collector of the city of Mobile, a report of the gross amount of his sales, as required by an ordinance of the city.

6. Respondent says, on or about the 25 day of June respondent made an affidavit against complainant, before Jones M. Withers, 30 as mayor of the city of Mobile, for failing to give in the amount of his gross sales of merchandise for the quarter ending 31 day of March, 1866.

That said Withers, did as before, as respondent is informed, cause complainant to be brought before him, on the 26 day of June, 1866, when respondent was required to come before said mayor, as a witness, and testified that complainant had failed to give in to respondent, the gross amount of his sales of merchandise, for the quarter ending the 31 of March, 1866.

6. Respondent denies that he has proceeded to enforce the collection of the tax against the complainant, and says that all he has done thus far, is to endeavor to get him to give in to respondent the gross amount of the sales of his merchandise for the quarter ending 31 of March, 1866.

Respondent having fully answered, prays to be hence dismissed with his reasonable costs, &c.

And before the filing of said answer the demurs to said bill of complaint, and assigns the following grounds of demurrer:

1. Said bill is multifarious, in uniting two distinct and separate matters, to wit, the proceedings against the complainant for a breach of an ordinance of the city, and his liability to a tax on the gross proceeds of his sales.

2. Because it seeks to enjoin and obtain relief against proceedings had before the mayor of the city of Mobile against complainant, for a breach or violation of an ordinance of the said city.

3. Because complainant has a complete and adequate remedy at law.

4. Because the subject matter of said bill concerns other persons besides complainant, and should not be filed in his name alone.

5. Because said bill shows that said complainant is liable to the tax on the gross amount of sales of merchandise made by 31 him in the city of Mobile since the 1 day of January, 1866.

6. Because said bill claims that said complainant is not liable to said tax, because the goods sold by him were imported from a foreign country, and does not allege, or show that he was the importer of them.

7. Because it shows that he was not the importer.

8. Because it shows that he does not complain of any tax laid or threatened to be laid, by the city of Mobile, upon imported goods in his hands.

9. Because it does not show that any tax has been assessed against him at all.

10. Because it contain no equity.

JOHN PARHAM.
S. S. SEMMURS.
W. BOYLES.
SMITHS & HERDON.
Sols. for Def'ts.

Before me, comes John Parham, as tax collector of the city of Mobile, who, after being first sworn, saith that the matters & things set forth in the foregoing answer, so far as the same are stated on his own knowledge are true, and those stated on information he believes to be true.

JOHN PARHAM.

Sworn to and subscribed before me, by said John Parham, this 14 day of July, 1866.

JNO. M. TAYLOR,
Register.

Exhibit "A."

MUNICIPAL BUILDINGS, CITY TAX COLLECTOR'S OFFICE,
MOBILE, *March* 20, 1866.

Notice to city tax payers:

32 The tax list for the present year, 1866, having been completed by the assessor, and the mayor having issued his warrant to me, for the collection of the same, all persons are hereby admonished that I am prepared to receive the same, and that they are required by law to pay said city taxes within sixty (60) days from the date of this notice.

Additional.

Notice is given to all persons who have sold, or may have been engaged in the sale of any merchandise at private or auction sale, during the two (2) quarters preceding the 1 of April, 1866, to come to the office of the city tax collector, on the 2 day of April next, and give in, under oath, the gross amount of his sales, as provided for by law.

J. PARHAM, *C. T. C.*

Exhibit "B."

To Mr. JOHN PARHAM,
Tax Collector, City of Mobile:

The only sales of merchandise made by me, are of foreign salt in the original packages as imported into this city from foreign countries.

Such business and sales are regulated by the laws of the United States, and are not the subject of State legislation. I decline to make report of such sales for city taxation till my liability is established by the proper judicial authority.

Mobile, June 18, 1866.

(Signed) M. WARING.

Filed July 14, 1866.

JNO. M. TAYLOR,
Register.

Notice of motion to dissolve injunction.

To Moses Waring, complainant, or Messrs. Hamiltons, his attorneys:

33 You will please take notice that we will on the sixth day of August, 1866, move the chancellor of this chancery district, at his residence in Tuskegee, in the State of Alabama, to dissolve the injunction in the case of Moses Waring *versus* Jones M. Withers, the Mayor, Aldermen and Common Council of the city of Mobile, and

John Parham, as tax collector, pending in the Chancery Court at Mobile, at which time and place you can attend, if you think proper.

Mobile July 17, 1866.

Respectfully,

S. S. SEMMES.
W. BOYLES.
SMITHS & HERNDON.
Sols. for Defendants.

Sheriff's return.

Rec'd July 17, 1866, and on the 18 July, 1866, I served a copy of the within notice in chancery, on Peter Hamilton, esq.

M. D. GRINNELL, *Sh'ff M. C.*
By E. GERORD, *D. S.*

Decretal order.

At Chambers, in vacation, on the 13 day of August, 1866, the following decree was rendered in this cause.

MOSES WARING
vs.
THE MAYOR, ALDERMEN, AND COMMON COUNCIL of the city of Mobile *et al.*

This cause was submitted to me in vacation on the 6 instant, in accordance with a notice theretofore duly given, on a transcript of the bill and answers, and a motion of the defendants, the Mayor, Aldermen, and Common Council of the city of Mobile, to dissolve the injunction heretofore granted, on the ground: 1. Of a want of equity in the bill, and 2. Because of the denials of the answer of said defendants, and said motion having been held over for consideration:

It is now, on consideration thereof, and of the arguments of
34 the several solicitors of the respective parties submitted therewith, ordered, adjudged and decreed, that the said motion be overruled and denied.

And it is further ordered that the Mayor, Aldermen, and Common Council of the city of Mobile, do pay the costs of the said motion, to be taxed by the register, and for which, if necessary, an execution may issue.

(Signed) A. W. COOKE,
Chancellor So. Div.

Depositions for Complainant.

Interrogatories in behalf of complainant to A. J. Ingersoll, Geo. W. Owen, John D. Fowler, material witnesses, residing in Mobile.

MOSES WARING
vs.
MAYOR, ALDERMEN, AND COMNON COUNCIL of Mobile *et al.*

Richard B. Owen, esq., Commissioner:

1. In what business are you engaged, and were you in 1865 and 1866, and where? What branch of commercial business does complainant follow? And did he in 1865 and 1866?

2. During those years had you commercial transactions with him? If so, relating to what article of merchandise? If you say he made purchase of any article from you, or through your agency in behalf of others, state for whom you were acting. For domestic or foreign merchandise? Of what country or countries is the article so purchased by Waring the product? And how is it brought into Alabama?

3. If you say the article is brought from any foreign country, state the course of dealing between you and said Waring at the time of such dealing and contract; where is the article? Is it in transitu, or still in the foreign country, or has it arrived in Mobile? How is it delivered to said Waring? And at what liability, and by whom? How are the goods brought to the city; by whom, and by whose expense and direction? In what quantity is the purchase made?

35 4. At what point of time in the voyage of the ship, is the contract of sale usually made? Is it after the vessel has arrived and delivered her cargo, or is the cargo still on board; is it before or after bulk is broken, or the hatches taken off? Is it before or after the cargo is entered at the custom-house for payment of duty; before or after the vessel has come within the limits of the city of Mobile? State the manner of the business transacted between you and said Waring, in relation to the sale and delivery to him, and receipt by him, of the salt, fully and particularly? By whom is the money furnished that pays the duties on said salt?

5. How is the duty to be paid, ascertained; by weight or count? If by either, where is the weighing or counting done, and the amount defined? And is this before or after its arrival in Mobile? And before or after the contract of sale with Waring?

6. How are you advised of the shipment of the salt from the foreign port? And is this knowledge acquired before or after the arrival of the ship in the bay of Mobile? At the time of the arrival in the bay whose property is the salt? At the time of its unloading from the ship, whose property is the salt? At the time of its entry for payment of duty, whose property is the salt? At whose risk is it taken and brought from the ship to the city?

7. State any other matter or thing within your knowledge, of benefit to plaintiff.

HAMILTONS, *Sol's Compl't.*

Interrogatories of material witnesses for complainant, to wit, James Crawford, Wm. F. Cleveland and Julius Hessee, and S. Charpentier, residing in Mobile.

MOSES WARING
vs.
MAYOR, ALDERMEN, AND COMMON COUNCIL of Mobile *et al.*

Richard B. Owen, Esq., commissioner:

36 1. Do you of the arrest of said plaintiff by order of Jones M. Withers, Mayor of Mobile, in June last? If so, state for what cause, and upon what pretence? Was said plaintiff restrained of his liberty? If so, when and where, and for what time? At what place was he so confined?

2. State how said Warren eventually regained his personal freedom? And state any other matter or thing, within your knowledge of benefit to complainant.

HAMILTONS, *Compl't Sol's.*

Filed January 16, 1867.

JNO. M. TAYLOR, *Register.*

Notice of Interrogatories.

THE STATE OF ALABAMA, *Mobile County, ss:*

To Messrs. S. S. Semmes, William Boyles, or Smiths and Herndon, greeting:

You will please take notice, that in a certain cause pending in our Court of Chancery, for the first district of the southern chancery division of said State of Mobile, wherein Moses Waring is complainant, and the Mayor, Aldermen, and Common Council of the city of Mobile, are defendants. Interrogatories to A. J. Ingersoll, G. W. Owen, J. N. Fowler, James Crawford, William F. Cleveland, S. Charpenteir, and Julius Hessee, witnesses for the said complainant, have been this day filed in my office, which said interrogatories will remain on file as aforesaid, for ten days, during which time you may file cross-interrogatories, if you think proper.

Witness J. M. Taylor, Register of the Court of Chancery aforesaid, at office, this 17 day of June, A. D. 1867.

Attest: JNO. M. TAYLOR,
Register 1 District So. Ch'y Div. Ala., &c.

37 *Sheriff's return.*

Rec'd 17 January, 1867, and on the same day I served a copy of the within notice of interrogatories, filed also a copy of the interrogatories on Wm. Boyles, esq.

M. D. GRINNELL, *Sheriff M. C.*,
By HENRY T. GAINES, *D. S.*

Cross-interrog's.

MOSES WARING
vs.
MAYOR, ALDERMEN, AND COUNCIL OF THE city of Mobile.

The defendants except to so much of the 2 interrogatory propounded to A. J. Ingersoll, Geo. W. Owen, and John D. Fowler in the above-stated case, as asks, "If you say he made purchases of any article from you," as leading; and to so much of the same interrogatory as is as follows, "or through your agency in behalf of others," as being leading; and also to so much as is as follows, "for domestic or foreign merchandise," as being leading.

The defendants except to so much of the 3 interrogatory as is as follows: "State the course of dealing between you and said Waring." 1. Because it is irrelevant and incompetent; and the answer to so much of said interrogatory would not be evidence in this case; the only dealing between said witness and Waring that would be competent, would be transactions relating to the purchase of salt in the year 1865 and 1866.

The defendants also object to so much of said interrogatory as is as follows, "at the time of such dealing and contract, where is the article." 1. Upon the ground that it is leading; it is assumed that a contract was made. 2. Because it is too general; it does not fix the time or place, or as to what article or articles are enquired about.

Also, as to so much of said interrogatory as is as follows: "Is it in transitu, or still in the foreign country, or has it arrived in Mobile?" 1. Upon the ground that it is leading. 2. Upon the grounh that is too general, in this, as to time, place, and as
38 to the character of the merchandise.

The defendants also except to so much of said interrogatory as is as follows: "How is it delivered to said Waring, and at what liability, and by whom?" 1. Because it is leading. 2. Because it is too general as to time, place, and as to the kind of merchandise.

The defendants also except to so much of said interrogatory as is as follows: "How are the goods brought to the city, by whom, and at whose expense and direction." 1. Because it is too general as to time and place, and as to the kind of merchandise referred to.

The defendants also except to so much of said interrogatory as is as follows: "In what quantity is the purchase made," upon the ground that it is too general as to time, and as to the kind of goods referred to.

The defendants object to so much of the fourth interrogatory as asks, "At what point of time in the voyage of the ship is the contract of sale usually made." 1. Because it is leading. 2. Because it is too general in this, that if there were more than one sale, the witness should be required to state the time the contract was made in each case. 3. Because it is uncertain as to time, date, and the kind of goods referred to.

The defendants object to so much of the same interrogatory as is as follows: "State the mannner of the business transacted between you and said Waring in relation to the sale and delivery to him, and receipt by him, of the salt," upon the ground that it is leading.

Not waving, but saving the foregoing objections, the defendants propound the following cross-interrogatories:

Cross-int. 1. If you say, in answer to the 2 interrogatory, that you have had commercial transactions with Waring in 1865 and 1866, then state whether the said transactions related to the sale of salt. If yea, state fully and particularly each transaction or sale made after the 1 day of January, 1865, up to and until the 26th day of June, 1866.

39 State particularly the name of each vessel, when she arrived in the bay of Mobile, with intention to unload her cargo; who were the consignees of each vessel; the quantity of salt on board of each, and if any contract of sale was made of the salt. State what was the contract, and when and how was it performed. State whether said contract or contracts were made before or after the entry of the cargo was made at the custom-house, and whether it was done before the vessel was boarded by the revenue officers at Mobile.

2. Who entered the salt at the custom-house in Mobile, and paid the duties on it? Was it not done by you as consignees? If yea, was it done in the name of the foreign shipper by you, as agents and consingees?

3. State each contract made with Waring for the sale of salt at any time between the 1 January, 1865, and the 26 June, 1866; where the vessel was at the time, and whether the vessel or vessels were not at the time within the jurisdiction limits of the State of Alabama, and whether in each instance the vessel or vessels had not arrived within the collection district of Mobile before said contract was made. Give the date of each contract, and the substance of it, which were made with Waring, for the sale of salt, between the 1 day of January, 1865, and the 26 of June, 1866, and the number of sacks sold at each time. State whether the salt was paid for before it was received by Waring in his warehouse in Mobile. State whether any one or more of said contracts made between you as consignees or as agents, for the sale of salt, between the 1 day of January, 1865, and the 26 day of June, 1866, were in writing. If so, attach the same, or copies of the same, to your answers to these cross-interrogatories. State the date of the arrival of each vessel in the bay of Mobile, which had aboard that which was sold to Waring between the 1 day of January, 1865, and the 26 day of June, 1866.

4. Did you ever sell to Waring, between the 1 January, 1865, and 26 June, 1866, as consignees or agents, or otherwise, any salt before the vessel on which it was laden arrived in the bay of Mobile,

40 with intention to unload and discharge her cargo? If you state when, how much, and the date of such sale, and the name of the vessel which had said salt aboard, and if so, was such sale or sales verbal or in writing?

5. Who paid the freight upon the salt you sold to Waring between

the 1 of January, 1865, and the 26th of June, 1866? Did you not pay it, or was it paid by Waring? Has Waring in any single instance paid for the salt until it is received in his warehouse?

6. If in your answer to the 3 interrogatory, you should say that Waring purchased the salt in transitu, then please state whether you mean to say that he purchased the salt on the arrival of the vessel in Mobile. Please state whether Waring has in any instance purchased from you any salt between the 1 day of January, 1865, and the 26 day of June, 1866, before the vessel on which it was laden arrived in the bay of Mobile, with the intention to unload or discharge her cargo. If so, when? Give the name of the vessel, the date of her arrival, and the date of the purchase, and state whether the purchase money was paid, and by whom?

7. If you say the sale is made after the vessel arrives in Mobile bay, then state if it is not after the vessel is boarded by the revenue officers of the custom-house at Mobile. If yea, do the said officers cause the hatches of the vessel to be taken off for the purpose of inspecting the cargo? If, in answer to the 4 interrogatory, you should say that Waring furnished the money to pay the duties, then state whether this is done before or after he receives the salt in his warehouse, and whether the money furnished to pay the duties is not deducted from the amount Waring is to pay for the price of salt?

8. If in answer to the 6 interrogatory you should say that the salt sold by you to Waring between the 1 day of January, 1865, and the 26 day of June, 1866, was the property of Waring when the vessel arrived in the bay of Mobile, then state whether he purchased and paid for the salt after the vessel arrived in tthe bay of Mobile, or whether he contracted for the purchase of the salt, to be paid
41 for after it was inspected and delivered to him on the wharf of Mobile. Who pays the expense of bringing the salt from the ship, in the bay, to the city? If you say Waring does, then state, if you can, whether the cost or expense of bringing the salt to the city is not deducted from the price of the salt? Do you get any pay for the salt before it is taken from the ship to be delivered in the city?

WM. BOYLES,
Of Counsel for Def't.

9. If the salt had been lost or damaged at sea or before it had been delivered to Waring, whose loss would it have been?

SMITH & HERNDON,
Of Counsel for Def't.

Rebutting.

The last cross-interrogatory is objected to by the complainant, because it inquires for a conclusion of fact, and not a matter of fact within the knowledge of the witness.

1. When and at point has all the salt that Waring has received within your knowledge, been actually delivered to you? Of what country

has the salt so, within your knowledge, received by Waring, been the production, or produce, and from what country has that salt been brought from, and how?

2. To what point or place was that salt intended to be brought? If you say to the city of Mobile, how far from the city of Mobile was it uniformly received by Waring, and was this on land or on the water?

3. Do all the vessels that anchor in the bay of Mobile from foreign ports, unlade their cargo there? Are the cargoes of such always brought to Mobile? Does it ever happen that vessels arriving in Mobile Bay from foreign ports, afterward and before breaking bulk, proceed with their cargoes to other ports, and there unload?

4. In the instances within your knowledge of Waring receiving
42 from ships from foreign ports, please to state whose property was the salt at the time of its entry for duty; whose, when the hatches were taken off; whose, when the bulk was broken, and the unloading commenced.

HAMILTONS, *Sol's Comp't.*

Filed 25th January, 1867.

JNO. M. TAYLOR, *Register.*

Cross-interrog's.

Cross-interrogatories to be propounded to James Crawford, Wm. F. Cleveland, Julius Hessee, and S. Charpentier, witnesses to be examined in the above stated cause.

MOSES WARING
vs.
MAYOR, ALDERMEN, and COMMON council of Mobile, *et al.*

Cr.-in. 1. If in your answer you say that Moses Waring was arrested and imprisoned by order of Jones M. Withers, mayor of the city of Mobile, then state, if you can, whether he was not imprisoned for a refusal to obey an ordinance of the city of Mobile? In this in refusing to render an account of his gross sales of merchandise, from the 1 day of January, 1866, up to and until the day of , 1866.

W. BOYLES, *Att'y for Def'ts.*

Filed 24 January, 1867.

JNO. M. TAYLOR, *Register.*

Commission to take test'y.

MOSES WARING
vs.
THE MAYOR, ALDERMEN, and COMMON council of the city Mobile, *et al.*

Chancery Court, first district southern chancery division, to Richard B. Owen, esq., greeting:

Know ye, that we, in confidence of your prudence and

43 fidelity, have appointed you, and do, by these presents, give you full power and authority to take the depositions of A. J. Ingersoll, G. W. Owen, J. D. Fowler, James Crawford, William F. Cleveland, S. Charpentier, and Julius Hessee, witnesses on the part of complainant, in a cause pending in our said court, wherein Moses Waring is complainant, and the Mayor, Aldermen and Common Council of the city of Mobile, defendants, and therefore, we command you that at such time and place, or times and places as you may appoint, you do cause the said A. J. Ingersoll, G. W. Owen, J. D. Fowler, James Crawford, Wm. T. Cleveland, S. Charpentier, and Julius Hessee, to come before you, and then and there examine them on oath, on the interrogatories and cross-interrogatories annexed, and that you do take such examination, and reduce the same into writing, and return the same annexed to this writ, closed up under your seal into our said Chancery Court, with all convenient speed, that the same may be read in evidence on the trial of the cause aforesaid.

Witness, John M. Taylor, register of our said Chancery Court at office, and also the seal thereof, this 25th day of January, A. D. 1867.

Attest:

JNO. M. TAYLOR, *Register.*

Depositions.

THE STATE OF ALABAMA, *Mobile County:*

Be it remembered that I, Richard B. Owen, the commissioner named in the annexed commission, did, by virtue thereby, cause to come before me in the city of Mobile, at the times hereinafter mentioned, A. J. Ingersoll, John D. Fowler, and George W. Owen, the witnesses therein named, to testify, and the truth to say, in answer to the annexed interrogatories and cross-interrogatories in a certain cause pending in the Chancery Court for the first district south-
44 ern chancery division of the State of Alabama, wherein Moses Waring is complainant, and The Mayor, Aldermen, and Common Council of the city of Mobile, *et al.*, are defendants. And the witnesses, having been by me severally duly sworn to speak the truth, the whole truth, and nothing but the truth, in said cause, did thereupon, in answer to said direct and cross-interrogatories, depose and say as follows: That is to say: George W. Owen, being first sworn and examined, says:

1. To the first interrog. he says, in the shipping and commission business in the city of Mobile, and was so engaged in the years 1865 and 1866; up to the 1 December, 1865, I was clerk and book-keeper of D. Wheeler & Co., and since that date, have been a partner in said firm.

So far as I know the chief business of complainant is that of a dealer in salt, and was so in 1865 and 1866.

2. To the second inter. he says, I had. My transactions with him related to salt. Our firm was acting in these transactions with complainant, for foreign merchants. The salt purchased of us by Waring, was the product of Great Britain, and was brought into Alabama in ship.

3. To the 3 interrog. he says, in many instances we are advised by the owners of a cargo of salt in England of the shipment to this port of such cargo, and we have thereupon, in some instances, when we thought it to the advantage of the owners, sold such cargo to complainant to arrive. In other instances vessels have arrived in the bay of Mobile, with salt for ballast, "seeking a market," and after remaining a short time, making inquiries, and ascertaining the probability of obtaining freight hence, have determined to dispose of the salt, and unload, and we have thereupon, as consignees, sold the cargoes of salt in the original packages to complainant on board the vessel, in the bay of Mobile. Our conditions being that we are in no way liable or responsible for the salt after its delivery to the barge or lighters of complainant along side of the vessel. In
45 other instances vessels, after arriving, seeking a market, and ballasted with salt, finding they could not do well here in respect to freight, have left for other ports, without breaking bulk, or unloading any portion of the salt. In our sales of salt to the complainant for the last two years, we have acted solely as the agents of the foreign owners, and accounted to them for the proceeds, which are usually applied to the disbursements of the vessel. The salt is delivered to Waring from the ship, in the bay of Mobile, about thirty miles below the city, and he assumes all the risks and expenses in reference to it, upon each delivery. It is delivered to him by the captain or chief officer of the ship, after having been advised by us of its sale to Mr. Waring. When delivered, as aforesaid, the salt is brought to the city in barges or said lighters, at the expense, risk, and direction of the purchaser. The purchase invariably embraces the whole cargo of salt.

4. To the 4th inter. he says, the sale is sometimes made before, and sometimes after, the arrival of the ship in the bay of Mobile. The cargo is always still on board at the time of the sale, and before bulk is broken; but whether before or after the hatches are taken off, I cannot say. I presume there is no particular time for taking off the hatches, as I understand these to be merely kept on during the voyage to preserve the cargo. The sale is always made before the cargo is entered at the custom-house for the payment of duty. No vessel from which we have ever sold complainant a cargo of salt has ever come nearer to the city of Mobile than the anchorage in the lower bay. The manner of our sales to complainant has been as follows: We sell him the salt deliverable in the bay, deliverable alongside the ship; complainant assuming the risk and expense of its transportation to the city from the moment of its reception on board his barge or lighter. In many instances, when we have not had sufficient idle funds on hand to pay the duties upon the salt, we have called upon him for an advance of the purchase money. In
46 other instances we have paid said duties without having recourse to complainant; but in either case the amount of duties so paid is charged in the sales.

5. To the fifth inter. he says, the duty to be paid is ascertained by weight, being about 24 cents in gold the 100 pounds; and the

weighing is done by a custom-house officer, after the landing of the salt on the wharf in Mobile, and always after the contract of sale with Waring.

6. To the sixth inter. he says, we are sometimes advised of the shipment of the salt by the owners in the foreign port, and at other times we have no advices or information as to the shipment until the arrival of the ship in the bay of Mobile. When we sell "to arrive," the salt, upon its arrival in the bay of Mobile, is the property of Mr. Waring, and in other cases it is the property of the foreign shippers. At the time of the unloading, so far as our sales to him since the close of the war are concerned, it has, at the time of unloading, been the property of complainant. The sale has always been made before the entry of the salt for the payment of duties, and the salt became the property of complainant. It is always taken and brought to the city at the risk of complainant.

7. To the seventh inter. he says, I know nothing further than I have stated in answer to the foregoing interrogatories.

To the cross-interrogatories George M. Owen answers and says as follows, to wit:

1. To the first cross-inter. he says, said transactions did relate to the sale of salt. To give all the particulars of each transactions of this character with the complainant would involve a laborious examination of the books of our firm, for which I cannot well spare the time. From memory I will state, that from January, 1865, to June, 1866, our firm has sold to complainant salt as follows: From British ship "Belle Carregg" about 5,000 sacks salt; from British ship "Tiger" about 4,500 sacks; from British ship "Narward" from 9,000 to 10,000 sacks; from British ship "Arthur White" about 4,500 sacks; from British ship "Dakotah" about 5,500 sacks salt; from British ship "David Cannon" about 2,000 sacks; from British ship "Tasman" about 5,000 sacks; from British ship Chunnee about 5,500 sacks; and there may be others which I, at present, do not remember. I cannot tell the dates of the arrivals of these vessels in Mobile bay further than that they arrived prior to June, 1866. We, that is, D. Wheeler & Co., were the consignees of these vessels, and I have already given, to the best of my knowledge, the quantity of salt on board of each. In the cases of the two first-named vessels, my recollection is, the sales of the salt on them was made to complainant "to arrive;" the others named, I think, arrived in the bay before we had previous advice of their sailing for this port, and their cargoes of salt sold to complainant after their arrival in the bay in bulk, and on board the vessel, he assuming all risks and expenses incurred after its unloading from the ship in the bay; said sales were made before entry of the cargo at the custom-house. I do not know whether said sales were made before (except in the case of the first two named vessels) the vessels were boarded by the revenue officers or not; but my impression is, every vessel is boarded immediately upon her arrival in the bay by an officer from the revenue cutter stationed there.

47

2. To the second cross-inter. he says, I entered said salt at the

custom-house, and our firm paid the duties as agents or consignees of the foreign shippers, the amount of said duties being always, however, charged in the sales, and complainant, in some instances, advancing the funds therefore.

3. To the third cross-inter. he says, I have answered this cross-interrogatory as fully as I can, at present, in my answer to the first cross-interrogatory. In some instances a large portion of the purchase money for the salt was paid before it was received by Waring in his warehouse. None of said contracts of sale were in writing. I do not remember the dates of the arrivals of the vessels;
48 they arrived during the fall of 1865, the winter of 1865, and the following spring.

4. To the fourth inter. he says, my impression is, we sold the cargoes of two vessels to complainant before their arrival in the bay of Mobile. I think this was in the fall of 1865; the two cargoes consisted of between 9,000 and 10,000 sacks. We may have sold him in this way other cargoes, as I cannot be exact, speaking only from memory. Said sales were verbal.

5. To the fifth cross-inter. he says, no freight was paid on said salt, all of the cargoes having been on ships' account. He has paid large portions of the purchase money, in several instances, before the receipt of said salt in his warehouse.

6. To the sixth cross-inter. he says, we have in some cases sold the complainant salt "to arrive," but in the majority of cases have sold it to him after its arrival in the bay of Mobile. I have answered the remainder of this cross-interrogatory in my answers to previous interrogatories.

7. To the seventh cross-inter. he says, I cannot say when the revenue officer boards a vessel on her arrival in the bay, but presume it is immediately after her arrival, though it has happened that a master of a vessel has reported at our office on his arrival, and informed us that he had not been yet boarded by the revenue officer. I do not know anything of the duties of the boarding revenue officer down the bay. The salt cannot be received from the custom officer until the duties are paid or secured; and hence in all cases where Waring has furnished money for the payment of duties, it has been done before the receipt of the salt in his warehouse. The amount of duty is not deducted from the amount to be paid by him, but is charged in the sales of the salt.

8. To the eighth cross-inter. he says, I have not said it was the property of Waring in all instances. When the vessel arrived,
49 have said he sometimes bought "to arrive," and sometimes after arrival, and have fully detailed in previous answers all particulars as to its delivery, &c. We sell the salt to him in the vessel in the bay, and he assumes all expenses of [expenses of] its transportation to the city; and expenses so paid by him are not deducted by him from the amount to be paid us for the salt. In some instances we are paid in large part for the salt before it is taken from the ship.

9. To the ninth cross-inter. he says, Our terms of sale are cash on

delivery from the ship in the bay, and, in the event of the loss or damage of the salt at sea, Mr. Waring, not having been called on for payment, of course could not be the loser, but the loss would fall upon the shipper, or upon the underwriters, if it were insured.

To the rebutting interrogatories G. W. Owen says, as follows:

1. To the first inter.: In Mobile bay. It has been the produce of Great Britain, and brought thence in sailing vessels.

2. To the 2nd inter.: To the bay of Mobile. It was uniformly received by Waring in the bay of Mobile, about twenty-five or thirty miles below the city, and received by him alongside the vessel in the bay.

3. To the third he says, It often happens that a vessel with a cargo, on ship's account and seeking market, anchor in the bay of Mobile, and after remaining awhile, and not finding a market, leaves without having broken bulk, and proceeds to another port.

4. To the fourth inter: In all these instances the salt was Waring's property, that is, supposing the hatches are not taken off until the the cargo is ready for delivery.

GEO. W. OWEN.

John D. Fowler, being next sworn and examined this 26 day of January, 1867, deposes as follows:

50 1. To the first inter. he says, In the general shipping and commission business in the city of Mobile; the complainant is an importer of and dealer in salt, and was so in 1865 and 1866.

2. To the second inter. he says, I had commercial transactions with him in those years, which related to salt. In those transactions I was acting for foreign merchants, and the salt sold him was the product of Great Britain, and was brought into Alabama by sea in vessels.

3. To the third inter. he says, In some intances in which I have sold to complainant it was in transitu to the port of Mobile, and in other instances the sale was made of it on board vessels in the bay of Mobile. The salt so sold to him was delivered to him alongside the vessel in the bay of Mobile on the order of my firm. The salt sold him was brought to the city in lighters, at his expense and directions, and, to a great extent, in his own lighters. The purchases by him of my firm were in all cases of the entire cargo of salt.

4. To the fourth inter. he says, In some cases I have sold to him cargoes of salt "to arrive," and in other cases have sold him such cargoes upon the arrival of the vessel in the bay of Mobile, but before bulk was broken, and always before the cargo was entered at the custom-house for the payment of duty. My sales of salt to him have been from vessels too large to come within the limits of the city [of the city] of Mobile, and consequently before the arrival of the salt within the city limits. The manner of our dealing with him was to sell him a cargo of salt, to be paid for by him upon the completion of the delivery to him in good order and condition alongside the vessel in the lower bay, our risk to cease immediately upon such delivery at said

locality; the sales were always made before entry at the custom-house. In some instances Waring furnished the money to pay the duties, and in our case paid them himself in person.

5. To the fifth inter. he says, It is ascertained by weight; I
51 do not know where the weighing is done; the amount of duty to be paid is ascertained after the sale to Waring, as our contracts of sale with him have always been before bulk was broken from the vessel.

6. To the sixth inter. he says, We are advised of the shipment by mail and before the arrival of the ship in the bay of Mobile. In some instances the salt belonged to Moses Waring before it arrived in the bay, and in others immediately on its arrival. At the time of its unloading from the ship it is his (Waring's) property. At the time of its entry for the payment of duties it was his property. The salt sold by my firm was taken from the ship and brought to the city at his risk.

7. To the seventh inter. he says, I have given as fully as I can all the information I have in relation to the subject-matter of these interrogatories.

To the cross-interrogatories John D. Fowler says:

1. To the first cross-inter. he says, They did; on the 19 October, 1865, my firm sold to complainant, "to arrive," 5,998 sacks of salt from British ship Margaret Pugh; on November 3, 1865, sold him 7,602 sacks from British ship Maxwell; on January 13, 1866, 2,971 sacks salt from barque Rix. This was all the salt sold him by us between the periods named, all the vessels, except the first named, arrived in the bay, at the date of the sale. The vessel first named arrived one month after the date of sale; my firm were the consignees of the vessels. The sales embraced the entire cargoes of each vessel. The contract, except that of the Margaret Pugh, "to arrive," of sale were verbal and were to the effect that Waring was to receive the salt alongside the vessel in the bay, and pay for the same upon completion of delivery, and said contracts were performed in accordance with their terms. The sales were made before entry at the custom-house, but whether before the vessel was boarded by
52 an officer from the cutter in the bay I do not know.

2. To the second cross-inter. he says, My firm entered the salt and paid the duties on it; the money in some cases, when needed, being furnished by Waring. On a cargo of salt sold him by us in November, 1866, from ship Norway, Mr. Waring himself entered the cargo, and paid the duty; when entered by us it was entered in our own name.

3. To the third cross-inter. he says, Have stated the contracts; two of the vessels were in the bay of Mobile, and, consequently, in the State of Alabama, and the third on her way out from Liverpool, at the time the contracts were made. In some instances the salt was paid for in part before warehoused, and in others not until afterwards; our needs for money governing the application to him for payment; the contract "to arrive" was in writing, but has been misplaced

and cannot be found; the other contracts were verbal; the remainder of this I have already answered.

4. And to the cross-inter. fourth he says, I did; on 19 October, 1865, 5,998 sacks per ship Margaret Pugh. The contract of sale was in writing, but has been misplaced.

5. To the fifth cross-int. he says, The freight was paid by us. He has paid on account for salt before it was received in his warehouse.

6. To the sixth cross-int. he says, I mean to say that he agreed on the 19 October, 1865, one month before the arrival of the vessel, to receive, upon arrival, alongside the vessel in the bay, the cargo of salt, and pay for it at the price named, upon completien of delivery, no matter what its market value was in Mobile on arrival. I have answered the remainder of this. The purchase money was paid by Waring.

7. To the seventh cross-int. he says, I believe it was before
53 any officer from the custom-house in the city was sent down to the vessel, as is usual; but as to whether the vessel had first been boarded by an officer from the cutter I cannot say. The officers sent down from the city must cause the hatches to be taken off to inspect the cargo. When he furnished the money to pay the duties it was before he received the salt, or any great quantity of it, and when so furnished by him it was deducted from the price of the salt, except in the case of 5,041 sacks from the ship Norway, in which he entered and paid the duties himself. In this case the duties paid by him was not deducted from the price at which my firm sold the salt.

8. To the eighth cross-int. he says, In every instance in which we sold salt to Waring, it became his property upon its delivery to the lighters in the bay, alongside the ship, and was from that time at his risk and expense, and payment was from that moment due. The cost and expense of bringing it to the city is not deducted from the price of the salt.

In some instances we receive money on account even before the delivery from the ship, in order to pay duties.

9. To the ninth cross-int. he says, Waring would have been released from his trade, and the shippers would have collected their marine insurance from the underwriters.

To the rebutting interrogatories he says:

1. In the bay of Mobile alongside the vessel. The salt was the production of Great Britain, and brought from Liverpool by sea, in the vessels named.

2. It was intended to be brought to the port of Mobile. It was uniformly received by Waring 25 miles from the city on the water.

3. No, the cargoes are always brought to Mobile from large vessels by lighters. To the remainder of this I answer, they do.

54 4. At all of these points of time the salt was the property of Waring.

JOHN D. FOWLER.

A. J. Ingersoll being next sworn and examined, this 26 day of January, 1867, deposes and says as follows:

1. To the first int. he says, I am, and was in 1865 and 1866, engaged in the general commission and shipping business in the city of Mobile; complainant is, and was in 1865 and 1866, engaged in the salt busness.

2 To the second int. he says, I sold him during those years salt which was brought here by sea, from foreign countries. I was acting in those sales for foreign shippers. The salt was the product of Great Britain.

3. To the third int. he says, My sales to him were by the cargo; at the time of the contract with him for the sale of the salt, it was in the bay of Mobile, about 25 or 30 miles below the city of Mobile. The salt sold by me was delivered to Mr. Waring by the ship in Mobile Bay, and brought to the city at his expense and direction. The purchase is always made of the whole cargo of salt.

4. To the fourth int. he says, I have often sold to him salt "to arrive," and also after the vessel containing it had arrived in the bay, and in all instances in the years 1865 and 1866, the sales were made while the cargo was still on board, and before bulk was broken, or the hatches taken off, and always before the entry of the salt at the custom-house for the payment of the duty thereon, and always before the salt or vessel containing had come within the limits of the city of Mobile. The manner of our dealing with him is as follows: The purchase is made by him of the salt, it is then entered at the custom-house, and a deposit made for the payment of duties when the amount thereof shall have been ascertained; a permit is
55 then given by the custom-house for the discharge of the salt, and an officer sent down to the ship to discharge her; after the discharge of the vessel and arrival of the salt in the city, the weight of the salt is ascertained, the duty adjusted and paid, and my bill then sent to Mr. Waring. I make the deposit of money for the payment of duty, but reimburse myself out of the proceeds of sale of the salt.

5. To the fifth int. he says, It is ascertained by weight, and the weighing done and amount defined in the city of Mobile, but after the contract of sale with Waring.

6. To the sixth int. he says, In the instances in which we have sold "to arrive," we were advised of the shipment by mail. Very often however, we have our first information of the shipment from the captain of the vessel after her arrival in the bay. At the time of the arrival of the ship in the bay when we have sold to arrive it is complainant's property. When not advised until the arrival of the vessel, it is the property of the foreign shipper at the moment of arrival and until sold. At the time of the entry for duty it is Waring's property, at the time of the unloading it is his property, and is taken and brought to the city at his risk, unless otherwise agreed upon.

7. To the seventh int. he says, I know nothing else now likely to be of benefit to the complainant.

To the cross-interrogatories he says:

1. To the first cross-int. My said dealings with him were in relation to salt, and I hereto annex a statement, marked Exhibit "A," which gives all the items of information called for in this interrogatory. These contracts of sale with him were always made before the entry of the cargo at the custom-house, but whether or not it was before each ship was boarded or not by a revenue officer from the cutter in the bay, I cannot say.

56 2. To the second cross-int. he says, It was entered in the name of A. J. Ingersoll & Co. We were however, reimbursed the amount paid for duties from the sales of the salt to Mr. Waring.

3. To his third cross-int. he says, For answer to the greater part of this cross-interrogatory, I would refer to the statement hereto annexed, marked Exhibit "A," except in cases where the salt was sold "to arrive," the vessel had arrived within the limits of the State of Alabama, and of the collection district of Mobile; pay was always due us from Waring before it went into his warehouse in Mobile, but whether it was always collected from him or not depended entirely upon our will in the matter. All of said contracts were verbal; the statement marked "A" will show the facts enquired for in the remainder of this interrogatory.

4. To the fourth cross-int. he says, I did; the contracts were verbal; statement marked Exhibit "A" will show the particulars.

5. To the fifth cross-int. he says, As far as I remember, there was no freight paid on this salt, it being always on ship's account. If, however, there was any freight paid, it was included in the price of the salt sold complainant. Waring has in many instances paid for the salt before it was received in his warehouse.

6. To the sixth cross-int. he says, As far as the corporate limits of Mobile are concerned, his purchases of me in 1865 and 1866, were always of salt in transitu, he never having, during those years, purchased any of me after its arrival within the limits of the city; he has purchased salt of me while the same was at sea, and Exhibit "A" will show the particulars of such purchases; the purchase money was paid and by Waring.

7. To the 7th cross-int. he says, The purchases are always made before any officer is sent down from the custom-house in Mobile, to the vessel. The hatches are opened and inspected by a port

57 warden; the first lighterman which goes alongside acts as port warden. I have not said that Waring furnished the money to pay the duties, but the price paid by him for the salt embraces duties, freight, if any, and all.

8. To the eighth cross-int. he says: In our sales of salt to Waring, by the terms of all our contracts, we were at liberty to collect from him on amount for each lighter load, as soon as delivered on board thereof, and the only reason, why we could not in all cases, call upon him for payment of the whole amount due, was that the custom-house had not received returns of the number of sacks. The whole amount is due, as soon as the salt is delivered to him down the bay. War-

ing pays the expenses of bringing the salt to the city, and as I have in all instances sold to him, deliverable in the bay, the cost of getting the salt to the city, has had nothing to do with the price at which I sold. The salt is not paid for until delivered on board the lighter from the ship.

9. To the ninth cross-int. he says: By the terms of my contracts with Waring, it would have been the ship's loss; but on the other hand, if salt had declined in price 50½ pr. ct. between the date of sale and its arrival in Mobile, the loss would have been Waring's.

To the rebutting int., he says:

1. To the first he says: In the bay. It has been the production of Great Britain, and has been brought thence by sailing vessels.

2. To the second he says: It was intended to be brought to Mobile bay, and it was uniformly received by Waring in the bay, at a distance of 25 or thirty miles from the city.

3. To the third he says: In many instances vessels arrive in Mobile bay, seeking a market, and after remaning awhile without getting business, they leave without having broken bulk, and proceed to other ports.

58 4. To the fourth he says: In all instances in which I have sold salt to Waring, to be delivered from ships in the bay, said salt has been the property of Waring at the time of entry for payment of duty thereon, also at the time when the hatches are taken off, and when bulk was broken and the unloading commenced, subject however, to the condition that the ship's policy of insurance was to cover it until delivered to his lighter alongside: and as soon as the permit for the unloading of the salt has been obtained from the custom-house, it has been handed to Mr. Waring, so that he might order it out. The salt has been in all instances subject to Mr. Waring's orders and disposal as soon as our contract of sale with him has been closed, but his risk does not commence until salt is out of the ship and on board the lighter.

A. J. INGERSOLL.

Exhibit "A" to A. J. Ingersoll's deposition at Mobile, between 1 *January*, 1865, *and the* 26 *June* 1866, *and sold between these dates.*

Name of each vessel.	When she arrived.	Who were consignees.	Quantity of salt on board.	Contract of sale.	When it was performed.
Trinidad	Oct. 18	A.J. Ingersoll & Co	350 sacks.	On arrival at market rate to M. Waring.	Oct. 18, 1865.
Aline	" 23	do	6990 "	On arrival at market rate to M. Waring.	23.
Superb	Nov. 29	do	6159 "	On arrival at market rate to M. Waring.	Nov. 29.
Shakespeare	" 24	do	5759 "	On arrival at market rate to M. Waring.	24.
New Brunswick....	Jan. 17	do	5909 "	On arrival at market rate to M. Waring.	Jan. 17, 1866.

Remarks—Trinidad sold on vessels arrival. Aline sold to arrive. Shakespeare, Superb, sold on vessels arrival New Brunswick, taken under general understand'g.

A. J. INGERSOLL.

59 Julius Hessee, being sworn and examined, this 28 day of January, 1867, in answer to the annexed direct and cross-interrogatories, for him intended, answers and says:

1. To the first int. he says: In June last I heard of complainant's arrest and being in the guard-house, and on going there to see about it found complainant in arrest, and in the custody of S. Charpertier, chief of police, who informed me he had arrested him by order of J. M. Withers, the mayor of the city. The mayor stated to me a few days afterwards that Waring had been arrested on the day in question, by his order, because of his (Waring's) refusal to give in the amount of his gross sales for purposes of taxation. He was confined in the room adjoining the office of the guard-house. I do not know the exact hour of his arrest, but it was sometime during the morning, and he was kept in confinement until about 7 o'clock, p. m. of the same day.

2. To the second int. he says: He was discharged upon his parole of honor to report the next morning to the chief of police, to be taken by him as a prisoner, to the mayor's court; I know of nothing more of benefit to the complainant.

To the cross-interrogatories Julius Hesse says:

I do not know what are the ordinances of the city of Mobile; but I was informed by the mayor, that complainant had been arrested for refusing to give in the amount of his gross sales.

JULIUS HESSEE.

James Crawford being next sworn and examined, this 29 day of January, 1867, to the interrogatories and cross-interrogatories annexed and for him intended, deposes and says:

1. To the first int. he says: I saw said plaintiff in June last, in the room adjoining the office of the city guard-house. I had heard
60 of his arrest, and called there to see about it. He was then and there restrained of his liberty, and informed me that he had been arrested by order of the mayor, J. M. Withers, and could not get out without giving bond; it was in the evening about candle light.

2. To the second int. he says: Plaintiff declined to give the bond which was demanded of him, for his appearance next morning before the mayor, and I said to the chief of police, that I would be responsible for his appearance next day, and plaintiff gave his word that he would so appear, and thereupon Captain Charpertier, the chief of police allowed him to go out with me.

To the cross-interrogatory, said witness, James Crawford, says:

I know nothing of the matters herein inquired, except from hearsay; I am under the impression, though not certain, that complainant told me he had been arrested for refusing to give in the statement of his gross sales.

JAS. CRAWFORD.

William F. Cleveland being next sworn and examined at my office, in the city of Mobile, this fourth day of February, 1867, deposes and says:

1. To the first int. he says: I saw him arrested on the 25 June last, by Thomas McPhillips, one of the police officers of the city of Mobile, who said he was ordered to make the arrest, by Jones M. Withers, the mayor of Mobile. The cause of said arrest, as I understood, was Waring's refusal to render a statement of his sales; he was arrested at about eleven o'clock in the forenoon, and taken to the city guard-house, where he was detained until I went home in the evening, about 4 o'clock, at which time I left him still in arrest.

61 2. To the second int. he says: I know nothing of my own knowledge, as to how he regained his freedom? I know nothing more than I have stated.

To the cross-int. he says: I understood the cause of his arrest to be as stated in this cross-interrogatory.

W. F. CLEVELAND.

And I, R. B. Owen the commissioner aforesaid, hereby certify that on the days aforesaid, I was attended by the said witnesses, that is

to say, by Geo. W. Owen, at my residence; by A. J. Ingersoll, at his office; by Jno. D. Fowler, at my office; by James Crawford, at his office; by Julius Hessee, at the office of Mr. Waring & Son.; and by William F. Cleveland, at my office; all of said witnesses being personally known to me, and thereupon the foregoing depositions were taken and reduced to writing by me, each in the presence of the witness testifying, and after reading the same over to them, they signed their names, each to his own deposition in my presence, as is above written.

Witness my hand and seal this 4th day of February, 1867.

[L. S.] R. B. OWEN, *Commissioner.*

Interrogatories to A. Farris.

In chancery, at Mobile, interrogatories to A. Farris, a material witness for complainant, residing at Mobile. Richard B. Owen, commissoner.

MOSES WARING
vs.
MAY. ALDERMEN, AND COMMON COUNCIL of Mobile, *et al.*

1. Do you know Moses Waring? What is your business and how long have you been so engaged? 2. Do you know of salt received
62 by said Waring during the year 1866 or before? If so, where was it received? If you know, state where it is the habit and custom of said Waring to receive his salt, in Mobile or out of it, and at what point or locality? From whom, and out of what is said salt usually received by said Waring, and who is his agent for that purpose? And who receipts for or acknowledges the delivery of the salt?

3. If you know, state from what said salt comes? And how is it brought into Alabama; that is, by what means of conveyance, and in what form said salt is put up? Where delivered to Waring, and who delivers said salt to him, or to his agent for him?

4. If you say you receive this salt from Waring, beyond the limits of the city of Mobile, state at what distance from the city? How is said salt brought to the city from that point; by what means of conveyance, and under whose direction, and at whose expense? Is the form of the salt as put up in packages changed or altered during its passage from the ship to Mobile?

5. To whom, and where do you deliver the salt? Do you deliver it in bulk, or in packages; and what is done with the salt after it is brought by you to the wharf?

6. State any other matter or thing you may know of benefit to complainant.

HAMILTONS, *Comp. Sol's.*

Filed 16 January, 1867.

JNO. M. TAYLOR, *Register.*

Notice of interrog's.

Court of Chancery.

THE STATE OF ALABAMA, *Mobile County:*

To Messrs. S. S. Semmes, William Boyles, or Smith & Herndon, greeting:

63 You will please take notice that in a certain cause pending in our Court of Chancery, for the first district of the southern chancery division of said State of Mobile, wherein Moses Waring is complainant, and the Mayor, Aldermen, and Common Council of the city of Mobile, are defendants. Interrogatories to A. Ferris, a witness for the said complainant, have been this day filed in my office, which said interrogatories will remain on file as aforesaid for ten days, during which time you may file cross-interrogatories if you think proper.

Witness John M. Taylor, register of the court of chancery aforesaid, at office, this 17 day of January, A. D. 1867.

Attest: JNO. M. TAYLOR,
Reg. 1 Div. So. Ch'y Div. Ala., &c.

Sheriff's return.

Rec'd January 17, 1867, and on the same day I served a copy of the within notice of interrogatories filed, also a copy of the interrogatories on Wm. Boyles, Esq.

M. D. GRINNELL, *Sh'ff M. C.*
By HENRY GAINES, *D. S.*

Cross-interrog's.

In Chancery, at Mobile.

MOSES WARING
vs.
MAYOR, ALDERMEN, AND COMMON COUNCIL of the city of Mobile.

The defendant's except to so much of the 2 interrogatory propounded to the witness to "state where it is the habit and custom of said Waring to receive said salt in Mobile, or out of it," upon the ground. 1. That it is leading. 2. Because the custom and habit of plaintiff is not competent or relevant testimony in this case; also to so much of the same interrogatory as asks the witness "From where and out of what is said salt usually received by said Waring," as being leading; also to so much of said interrogatory as asks
64 "and who is the agent for that purpose," because it is leading; the defendants also object to so much of the 3 interrogatory as is as follows, "or to his agent for him," because it is leading and because the witness is nowhere asked whether Waring had an agent in respect to the salt. The defendant's except to so much of the 4 interrogatory as asks "If you say you received this salt for Waring

beyond the limits of the city of Mobile," upon the ground that it is leading.

Not waving, but saving the foregoing objections to said interrogatories, said defendants propound the following cross-interrogatories to said witness.

Cr. Int. 1. If in your answer to the second interrogatory you should say that you know that salt was received by said Waring in 1866, and before that time, then please state how many sacks he received in 1866, and to the best of your recollection, at what time it was received, and from what vessel or vessels, and the quantity received from each vessel. If you, in your answer, state that Mr. Waring received salt in 1865, then please state the number of sacks and the time it was received, and how much from each, and whether you were personally present when it was received, and whether you took any account of it. State, if you can, if you were present when the salt was received by Waring in 1866? If so, did you take any account of it? Where did Waring receive the salt in 1866? Was it not in the jurisdictional limits of the State of Alabama? Was it not in the bay of Mobile? Where did Waring receive the salt in the year 1865? Was it not in the jurisdictional limits of the State of Alabama? Was it not in the bay of Mobile? State, if you can, whether the salt received by Waring in 1865 and 1866, was not received within the collection district of Mobile? Was it not in each instance after the vessel cast anchor in the bay of Mobile? Had, in each instance, the vessel been boarded by the revenue officer of the custom-house at Mobile? If in answer to 2 interrogatory, you should state from whom Waring received the salt, then please state the name or
65 names of each person from whom he received salt in 1865 and 1866; state the quantity, and the name or names of the vessel or vessels, and the quantity received from each. If you should say Waring had an agent, then state the name of the agent. If you should say that you were his agent, then state whether you know of your own knowledge that you received all and the only salt Waring had in his warehouse, in the city of Mobile, during the years 1865 and 1866. Were you in the employment of Waring in 1865 and 1866, or in either year? If so, in what capacity? Were you engaged in the business connected with Waring's warehouse in 1865 and 1866, or for any part of the time? If yea, for what length of time, and in what capacity? Can you state of your own knowledge that Waring had no salt in his warehouse in 1865 and 1866, or for any part of that time, but what was received by you in the bay of Mobile?

2. Do you know, of your own knowledge, that the salt Waring had in his warehouse in 1865 and 1866, came from Liverpool? If yea, state how you know the fact. Do you know, of your own knowledge, how much salt was delivered to Waring in 1865 and 1866? If so, how do you know the fact? Do you know, of your own knowledge, in what manner all the salt Waring had in his warehouse in the years 1865 and 1866, was brought to the city of Mobile, and from whom? If so, how do you know the fact?

3. Please read over carefully your answers to the direct and cross-interrogatories, and state what portion of your answer or answers to the direct or cross-interrogatories are of your own knowledge, and what portion or portions are from hearsay.

W. BOYLES,
Of Counsel for Def'ts.
SMITHS & HERNDON.

Filed Jan. 24, 1867.

JNO. M. TAYLOR, *Register.*

66 *Commission to take test'y.*

Chancery Court, first district southern chancery division.

MOSES WARING
vs.
THE MAYOR, ALDERMEN, AND COUNCIL OF THE city of Mobile.

THE STATE OF ALABAMA, *Mobile County*:

To RICHARD B. OWEN, esq., greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you full power and authority to take the deposition of A. Farris, a witness on the part of complainant, in a cause pending in our said court, wherein Moses Waring is complainant, and the Mayor, Aldermen, and Common Council of the city of Mobile are defendants, and therefore we command you that at such time and place, or times and places, as you may appoint, you do cause the said A. Farris to come before you, and then and there examine him on oath on the interrogatories and cross-interrogatories annexed, and that you do take such examination and reduce the same in writing, and return the same annexed to this writ, closed up under your seal, in our said Chancery Court, with all convenient speed, that the same may be read in evidence on the trial of the cause aforesaid.

Witness, John M. Taylor, register of our said court at office, and also the seal thereof, this twenty-fifth day of January, 1867.

Attest: JNO. M. TAYLOR,
Register.

Deposition.

Deposition of Abram Farris, a witness produced, sworn, and examined before me, this 28 day of January, 1867, under and by virtue of the annexed commission issued from the Chancery Court for the first district of the southern division of the State of Alabama, in a certain cause therein pending, where Moses Waring is
67 complainant, and the Mayor, Aldermen, and Common Council of the city of Mobile *et al.* are defendants; that is to say, the

said witness being duly sworn in answer to the annexed direct and cross-interrogatories, says:

1. To the first int. he says: My business is bringing salt up from the lower bay of Mobile, for Mr. Waring; and I have been so employed for eleven or twelve years. I, of course, know complainant.

2. To the second int. he says: I do. It is received in Mobile bay, about 25 miles from the city. It is his habit and custom to receive it in the bay of Mobile about 25 miles below the city. It is received from the chief officers of ships which bring it into the bay, and is received out of the ships. I am his agent for that purpose, and receipt for the salt.

3. To the third int. he says: The salt comes from Great Brittain, and it is brought into Alabama by sea in sailing vessels. When delivered to him, it is put up in four bushel sacks, and it is delivered by the chief officer of the ship.

4. To the fourth int. he says: About 25 miles beyond the limits of the city of Mobile. The salt is brought to the city from that point on lighters, under the direction and expense of complainant. Its form as put up in package is not changed or altered during the passage from the ship to Mobile.

5. To the fifth int. he says: I deliver the salt on the wharf of Mr. Waring in Mobile, and deliver the whole lighter load in the same packages as received. From the wharf it is taken and stored in the warehouse.

6. To the sixth int. he says: I know nothing more than as stated.

To the cross-interrogatories witness says:

1. To the first cross-int. he says: I cannot answer this, as I
68 do not keep the books and accounts of Mr. Waring, and cannot retain in my memory all the ships from which I have received salt for him, and the number of sacks. I dare say the book-keeper of Mr. Waring can give all these particulars. I have procured from the book-keeper of complainant a statement of the salt brought up by me for him from Oct., 1865, to Aug., 1866, which, on looking over, I recognize and declare to be correct, and which statement I hereto attach, marked Exhibit "A." I was present when the salt was received, and took an account of all which went into my lighter, which account I rendered in on my own arrival in the city, and no longer charged my memory with. It was received within the limits of the State of Alabama. It was in the bay of Mobile, and within the jurisdiction of the custom-house at Mobile. It was after the vessel had cast anchor. The vessel had in all instances been boarded by the custom-house officer before the salt was discharged. I cannot undertake to give the names of the vessels and persons from whom I received at this time, from memory. I was his agent, but as such agent did not receive all the salt Mr. Waring got. I only received that portion of it which went on board the barge, of which I had charge. Many other lighters received salt for him besides mine. I was in his employ in 1865 and 1866, as captain of his

barge, the "Ambassador." I know that Waring had other salt in his warehouse in 1865 and 1866 besides that brought up by me, as many other lighters were engaged in bringing him up salt besides mine.

2. To the second cross-int. he says: I do know it. I know it from the fact that it came in British vessels, the masters of which reported that they came from Liverpool. I do not know how much was delivered to him in 1865 and 1866. I do know in what manner it was all brought to Mobile, for foreign salt comes to Mobile in no other manner than as I have stated.

3. To the third cross-int. he says: I have stated nothing from hearsay, except what I said as to the statement of captains of
69 Brittish vessels that the salt came from Liverpool.

A. FARRIS.

And I, Richard B. Owen, the commissioner, aforesaid, do hereby certify, that on the said 28 day of January, 1867, I was attended at my office, in the city of Mobile, by the said witness, A. Farris, who is known to me, and thereupon the foregoing deposition was taken and reduced to writing by me, in the presence of said witness, and from his statements, and after carefully reading the same over to him, he signed his name thereto, as is above written, in my presence.

Witness my hand and seal this 29 day of January, 1867.

[L. S.] R. B. OWEN,
Commissioner.

Exhibit "A."

Memorandum of salt brought from Mobile bay by barge "Ambassador," for M. Waring.

1865.			
Oct.	28,	1,227 sacks of salt from ship	Aline.
Nov		5,220 "	Maxwell.
Dec.	1,	5,315 "	Norwood.
	11,	4,790 "	Do.
1866.			
Jan.	3,	4,000 "	Compeer.
	27,	2,971 "	Rix.
Feb.	14,	1,996 "	David Cannon.
	14,	1,226 "	New Brunswick.
M'ch	3,	4,683 "	Do.
	15,	2,998 "	Ryarson.
Ap'l	1,	3,008 "	D. Hoadley.
	18,	5,322 "	Martha.
Aug.	29,	2,032 "	Tiger.

44,988 sacks salt.

MOBILE, *Jan.* 29, 1867.

A. FARRIS, *Capt.*

70 Court of Chancery at Mobile.

Interrog's to C. Smith.

MOSES WARING
vs.
MAYOR, ALDERMEN, AND COMMON COUNCIL OF Mobile, *et al.*

Interrogatories in behalf of complainant to Chandler Smith, a material witness for complainant, residing in Mobile.

RICHARD B. OWEN,
Commissioner.

1. Do you know the parties to this suit? and how long have you known plaintiff? Do you know the business that complainant has been engaged in in Mobile since and before the 1 January, 1866? What means of knowledge have you, on the subject?

2. If you have such knowledge, state in what article or articles of merchandise, said Waring has dealt? State from what country, or countries such articles come; and how they are brought into the city of Mobile, by land or by water?

3. In making rules of such articles how does plaintiff act? In what quantity or quantities did he sell such articles? In what form is such articles received by plaintiff, in boxes or barrels, or what form of package? And what disposition did he make of such packages? Describe the mode of receipt, and the mode of sale and delivery of the said articles of merchandise? To whom were such sales made; that is to what classes of persons, having reference to their business? and for what purposes did they want said articles?

4. How does plaintiff, and how has he acquired said articles? from, that is from what class of dealers? In what quantity has he purchased it? and where has such articles usually been at the time of such acquisition by him?

5. When and at what locality or place has such article usually or always been delivered? From whom has he received it, and how? Was this in the city of Mobile, or how far distant? How and in what manner, and by what means, has said article been brought to the city of Mobile? At whose direction, and at whose
71 expense, and what disposition was then made of it?

6. By whom was the duties on such goods due to the United States paid, or the money therefor provided? Who furnished the money to pay such duties?

7. What has been the gross amount of the plaintiff's sales from 1 January, 1866? What was it from that date to April 1866?

8. Did you at any time, cause the defendants or any of them, and whom, to be notified of the nature of plaintiff's business, and of the claim he made for exemption from liability for the tax claimed? If so, state what occurred?

9. Do you know of plaintiffs being arrested by any person or persons under the authority of the mayor of Mobile? If so, state when

it occurred, on what pretence? How long was plaintiff in confinement under said arrest? and how was he discharged? and where was he confined?

10. State any other matter and thing you may know that will benefit the complainant.

HAMILTONS, *Sols. Comp.*

Filed 16 Jan. 1867.

JNO. M. TAYLOR, *Register*

Notice of interrog's.

STATE OF ALABAMA, *Mobile county:*

The Court of Chancery to Messrs. S. S. Semmes, Wm. Boyles, or Smith & Herndon, greeting:

You will please take notice, that in a certain cause pending in our Court of Chancery for the first district of the southern chancery division of said State, at Mobile, wherein Moses Waring is complainant, and the Mayor, Aldermen, and Common Council of the city of Mobile, defendants, interrogatories to Chandler Smith, witness for the said complainant, have been this day filed in my office,
72 which said interrogatories will remain on file, as aforesaid, for ten days, during which time you may file cross-interrogatories, if you think proper.

Witness, John M. Taylor, register of the Court of Chancery, aforesaid, at office, this 17 day of January, A. D. 1867.

Attest: JNO. M. TAYLOR,
Reg. 1 Dis. So. Ch'y Div., Ala.

Sheriff's return.

Rec'd Jan. 17, 1867, and on the same day I served a copy of the within notice of interrogatories filed; also a copy of the interrogatories on Wm. Boyles, esq.

M. D. GRINNELL,
Sheriff, M. C.
By HENRY T. GAINES, *D. S.*

Exceptions and cross-interrogatories.

In chancery at Mobile.

MOSES WARING
vs.
MAYOR, ALDERMEN, AND COMMON COUNCIL OF the city of Mobile, *et al.*

The defendants except to the 2, 3, 4, 5, 6, 7, 8, and 9 interrogatories propounded to Chandler Smith in the above-stated cause in behalf of complainant upon the ground that evidence of the business transactions of Waring, prior to the 1 day of January, 1865, and

subsequent to the 26 day of June, 1866, would be irrelevant and incompetent evidence in this court.

They also except to so much of the 3 interrogatory, as asks "and for what purpose did they want said articles," upon the ground that the evidence would be hearsay evidence.

They also object to so much of the 5 intorrogatory as asks, "where and at what place or locality has said articles usually, or always, been delivered to Waring," upon the ground that the witness can only testify as to facts, and not to the usual practice of complainant as to his business.

Not waving, but saving each of the said objections, the defendants propound the following cross-interrogatories to said witness:

73 Cr. int. 1. Were you in the employ of complainant from the 1 day of January, 1865, until the 1 day of January, 1866? If yea, in what capacity? Did complainant have any other person employed during that time to attend to the business you were engaged in, or that pertained to the selling and delivery of salt? If yea, how many persons were so employed, and who were they? name them.

2. Did complainant sell salt by the sack to consumers at any time between the 1 January, 1865, and the 26 June, 1866? During that time did not complainant sell salt to divers persons in the city of Mobile who were not traders but consumers, and that they not purchaise said salt for consumption? Did you as clerk of the complainant sell and deliver all the salt that has been sold by Waring between the 1 day of January, 1865, and the 26 day of June, 1866? If not, were you present at each sale of salt made by Waring or his clerk or clerks, agent or agents, during the time aforesaid? Do you know of your own knowledge that no salt was sold by Waring or by his clerk or clerks, agent or agents, to consumers between the 1 day of January, 1865, and the 26 day of June, 1866? If yea, how do you know the fact? Do you know of your own knowledge when the salt was sold, what disposition the purchaser or purchasers intended to make of it? If so, how did you know the fact?

3. If in your answer to the 4 interrogatory, you should state how Waring acquired the salt, then please state when and from whom Waring purchased salt between the 1 of January, 1865, and the 26 of June, 1866? State the number of packages or sacks in each purchase, from what vessel it was received, and at what time, and the name or names of each person or persons from whom each purchase was made? Were you present when each cargo was purchased? Were you present when each cargo was delivered? If not, can you state of your own knowledge, when and how each purchase was made, or when and how each cargo was delivered?

4. Were you present at the custom-house in Mobile at each time when the duties were paid on said salt? If not, can you state

74 of your own knowledge by whom the duties were paid? What amount was paid on each cargo of salt? Was not the money so paid a part of the proceeds of the sale of said salt? Was it not in each instance deducted from the proceeds of the sale of said salt?

Was not the expense of bringing said salt from the ships paid out of the proceeds of the sale of said salt, or deducted from the amount of the purchase money for said salt?

5. If in your answer to the 8 interrogatory you should state that you notified the defendants or either of them of the nature of complainant's business, and of the claim he made for exemption from liability for the tax claimed, then state when and to whom you gave the notice. Was it verbal or in writing? If in writing, please attach a copy to your answer to this cross-interrogatory. Did you make any affidavit in reference to the statements contained in said notice, or was exhibited at the time made by any other person?

6. If in answer to the 9 interrogatory you should say that complainant was at any time arrested by order of Jones M. Withers, as mayor of the city of Mobile, then state if you can whether he was arrested under and in pursuance of an ordinance of the city of Mobile, for refusing to render an account of his gross sales of merchandise for the quarter commencing the 1 day of January, 1866, and ending on the day of 1866.

W. BOYLES,
Sol's for Def'ts.
SMITHS & HERNDON,
Sol's for Def'ts.

Filed 24 January, 1867.

JNO. M. TAYLOR, *Register.*

Commission to take testim'y.

THE STATE OF ALABAMA, *Mobile County:*

MOSES WARING
vs.
THE MAYOR, ALDERMEN, AND COMMON COUNCIL of the City of Mobile.

Chancery Court, first district southern chancery division.

To RICHARD B. OWEN, Esq., greeting:

75 Know ye, that we, in confidence of your prudence and fidelity have appointed you, and by these presents, do give you full power and authority to take the deposition of Chandler Smith, a witness on the part of complainant in a cause pending in our said court, wherein Moses Waring is complainant, and the [the] Mayor, Aldermen, and Common Council of the city of Mobile, defendants, and therefore, we command you, that at such time and place, or times and places as you may appoint, you do cause the said Chandler Smith to come before you, and then and there examine him on oath on the interrogatories and cross-interrogatories annexed, and that you take such examination and reduce the same to writing, and return the same annexed to this writ closed up under your seal, into our said Chancery Court, with all convenient speed, that the same may be read in evidence on the trial of the cause aforesaid.

Witness, John M. Taylor, register of our Chancery Court, at office, and also the seal thereof, this 25 day of January, A. D. 1867.

Attest: JNO. M. TAYLOR, *Register.*

Deposition.

Deposition of Chandler Smith, a witness produced sworn and examined by me, this 26 day of January, 1867, under and by virtue ofthe annexed commission issued out of the Chancery Court, first district southern division of the State of Alabama, in a cause wherein Moses Waring is complainant, and the Mayor, Aldermen, and Common Council of the city of Mobile *et al*, are defendants; that is to say in answer to the annexed direct and cross-interrogatories said witness says as follows:

1. To the first int. he says: I know the plaintiff and have known him for 12 years. He has been engaged since January, 1866, in the salt trade. I have been his book-keeper since and before that time.

2. To the second int. he says: He has dealt in salt, which
76 come from Liverpool, England, by sea in vessels.

3. To the third int. he says: In making sales of salt, complainant sells to the trade and at wholesale and in large quantities; I mean to say he does not retail it. It is received by him in sacks, and remains in those sacks until again sold by him when the sacks go with the salt. The salt is received by complainant from the ship in the bay of Mobile, on board of lighters and thence brought to the city at his own expense and risk and there sold and delivered in the original packages. All sales made by him were in the original packages or sack. The sales are and were made by complainant to grocers and merchants in Mobile, and to the steamboats, which take it up the country for the purpose of making the freight on it. The merchants and grocers bought for the purpose of selling again.

4. To the fourth int. he says: From the consignees in Mobile of freight vessels, he purchased by the cargo, and in some instances the purchases were made when the vessels were in the bay of Mobile, and in others he has purchased "to arrive," that is, of course, while the vessels were at sea and before reaching the bay of Mobile.

5. To the fifth int. he says: In the bay of Mobile; he has received it from the ship in lighters alongside; this was about 25 or 30 miles distant from the city of Mobile; it was brought to Mobile in lighters at complainant's direction and expense, and then by him placed in warehouse and sold as above described.

6. To the sixth int. he says: The duties due the United States on said salt have always been added to the price thereof, and hence complainant has furnished the money to pay the same.

7. To the seventh int. he says: From the 1 January, 1866, to said 1867, the gross sales have been $188,127 75; and from 1 January, 1866, to 1 April, 1866, the gross sales were $40,033 61. See statement marked "A A," hereto annexed.

77 8. To the eighth int. he says: A notice, of which the paper hereto attached and marked "A" is a copy, was served on John Parham, city tax collector, by Collen Minge, a clerk in complainant's house.

9. To the ninth int. he says: I do know of plaintiff being arrested by a member of the police force of the city of Mobile. I do not remember the date of the arrest, but it was subsequent to the service of the notice above spoken of, and the pretence for his arrest was the alleged refusal by him to give in the gross amount of his sales. He was confined in the police office of the city of Mobile for several hours. I do not know how he was discharged.

10. To the tenth int. he says: I have stated fully all the information I have in relation to the subject-matter of this suit. I hereto attach a copy of a contract with William Floyd for a cargo of salt, which, though made subsequent to the date in question, shows the terms of all previous contracts with other parties.

To the cross-interrogatories Chandler Smith says:

1. To the first cross-int. he says: Was in his employ from 16 of November, 1865, to the 1 January, 1866, and since then and to the present time; was also in his employ for several years previous to the war; was his book-keeper. He had also employed, besides myself, in his said business, C. H. Minge and Martin Hanlin.

2. To the second cross-int. he says: He did not. He sold no salt to consumers at any time. I did not sell and deliver all the salt that was sold by him, nor was I present at all the sales of salt; but all the salt that was sold during the day was entered up each day in the evening by me as book-keeper. I know, of my own knowledge, that no salt was sold by Waring between the times inquired of, or by any of his agents, by the sack to consumers. I know the fact from having kept the books and accounts of complainant, in which all his transactions were entered up, and from the additional fact that bills were made out by me, and all moneys passed through my
78 hands. I never enquired what disposition purchasers intended to make of salt, when purchased; only know they bought at wholesale.

3. To the third cross-int he says: I hereto attach a statement marked "B," which shows the number of sacks purchased, from whom, from what vessel, and what date. I was not present when each cargo was purchased, nor when delivered, and cannot state, of my own knowledge, when or how each purchase was made, or when, or how each cargo was delivered; but I know the invariable habit of complainant was to receive his purchases of salt in the manner and at the locality mentioned by me in my direct examination.

4. To the fourth cross-int. he says: I was never present at the custom-house when the duties were paid. I know the duties were included in the cost of the salt. I cannot say what amount of duty was paid on each cargo; the money paid for duties was not a part of the proceeds of the sales of said salt, as the duty had to be paid before the salt was delivered to complainant. It was not deducted from the proceeds of the sale of said salt. The expense of bringing the salt up to the city was not deducted from the price thereof, but was borne wholly by complainant.

5. To the fifth cross-int. he says: For answer to this I refer to my

answer to said 8 direct interrogatory. I have attached a copy of said notice marked "A." I made no affidavit.

6. To the 6th cross-int. he says: I have not said he was arrested by order of General Withers; he may, or may not have ordered his arrest. I know he was arrested, and the cause of his arrest was as stated in this cross-interrogatory.

CHANDLER S. SMITH.

And I, Richard B. Owen, the commissioner named in the annexed commission, hereby testify, that on the said 26th day of January, 1867, I was attended by the said witness, Chandler Smith, who is personally known to me, and thereupon the foregoing deposition was taken and reduced to writing by me, in the presence of said
79 witness, at my office in the city of Mobile, and from his statements, and after carefully reading the same over to him, he signed his name thereto, in my presence, as is above written.

Witness my hand and seal, this 29 day of January, 1867.

[L. S.] R. B. OWEN, *Commissioner.*

Exhibit "A."

To Mr. JOHN PARHAM,
Tax Collector, City Mobile:

The only sales of merchandise made by me are of foreign salt, in the original packages, as imported into this city from foreign countries.

Such business and sales are regulated by the laws of the United States, and not the subject of State legislation. I decline to make report of such sales for city taxation till my liability is established by the proper judicial authority.

(Signed) M. WARING.

Mobile, June 16, 1866.

Notice given to John Parham 18 June, 1866.

(Signed) C. H. MINGE.

A true copy:

CHANDLER S. SMITH.

Exhibit "A."

Amount of sales of salt, by M. Waring & Son, from January, 1866 to January 1, 1867.

1867.		
Jan.	Sold this month	$17,120 50
Feb.	"	11,413 11
Mch.	"	11,500 00
Apl.	"	17,044 50
May.	"	9,782 65

June.	Sold this month		8,626 95
July.	"		12,931 55
Aug.	"		8,507 50
Sep.	"		12,157 54
Oct.	"		23,623 00
Nov.	"		24,325 00
80 Dec.	"		31,045 45
			$188,127 75

Amount of sales of salt by M. Waring & Son, from January, 1866, to April, 1866.

Jan.	Sold this month	$17,120 50
Feb.	"	11,413 11
Mch.	"	11,500 00
		$40,033 61

Exhibit "B."

Salt purchased by M. Waring & Son, from Jan. 1, 1865, to June 26, 1866.

Date.	From whom purchased.	Vessel.	No. sacks.
1865.			
Oct. 30.	Fowler, Stanard & Co	Margaret Pugh	5,998
	Do	Maxwell	7,602
Nov. 3.	Dan Wheeler & Co.	Bellemirgy	9,492
16.	John More	John Megall	2,817
18.	Dan Wheeler & Co	Norwood	9,805
30.	A. J. Ingersoll & Co	Aline	6,990
1866.			
Jan. 15.	Tuthill & McNeil	Adept	4,450
Feb. 10.	Fowler, Stainard & Co	Rix	2,971
15.	D. Wheeler & Co.	Arthur White	5,005
17.	Do	Dakotah	5,242
22.	W. H. Ketchnm	Compeer	8,899
Mch. 2.	D. Wheeler & Co	Chanee	5,652
	Do	David Cannon	1,996
12.	Smith & Ross	Ryonen	2,998
14.	A. J. Ingersoll & Co	Superb	6,959
15.	Do	Shakespeare	5,159
	Do	New Brunswick	5,909
26.	Smith & Ross	David Hoadley	2,993
24.	Wm. Cannon & Co	Clara Parkins	2,399
Apl. 6.	D. Wheeler & Co	Martha	6,350
21.	Do	Tasma	5,431
June 11.	Wm. Cannon & Co.	Carlotta	4,082
		Sacks	144,199

MOBIILE, *Jan.* 26, 1867.

The above are the dates on which purchases were entered on the books.

C. S. SMITH.

81 (Copy.)

Agreement with Wm. Flood.

MOBILE, *Jan.* 12, 1867.

I have this day sold to Mr. Moses Waring for ac. of Mr. G. B. Shute, of New Orleans, the cargo of Liverpool coarse salt, per "City of Melborne," consisting of 500 tons (10 to the ton) or 5000 sacks, delivered from the ship in Mobile bay at one dollar and forty cents, U. S. T. notes, per sack, cash.

Said salt to be delivered in half bleached sacks and to be paid for on receipt of delivery. Mr. Waring to deduct the amount of duties at the rate of one hundred and thirty-five for gold.

(Signed) WILLIAM FLOOD.

Interrog's to C. H. Minge.

MOSES WARING
vs.
MAYOR, ALDERMEN AND COMMON Council of Mobile, *et al.*

Interrogatories in behalf of complainant to C. H. Minge a material witness for him.

R. B. OWEN,
Commissioner.

1. Do you know the parties? In what article of merchandise has plaintiff dealt, since 1 January 1866? if you in salt, from what country has it come to Alabama, and by what means has it been brought? in what form of package is said salt uniformly brought to this country? in what quantities has said Waring acquired said salt, and in what form has he received it? in what form and in what quantity has he sold it? and to what class of persons in dealers has he sold it?

2. In his dealings by sale of said salt were the original packages broken or disturbed by Waring? when, and at what point or place does Waring receive the salt; in the city of Mobile or out of it, and how far distant?

3. Is any official authority by the course of that trade
82 required from the officers of customs to unload the ship? if you say permits are required, to whom are they delivered, and for what purpose, and what does Waring do with them? according to his usual course of dealings, whose property is the salt at the time of such delivery of the permits?

4. Do you know of any notice being served upon the city tax collector, of the business of Waring, and of his claim of exemption from city taxation? when was such notice given, and furnish a copy thereof, if you can?

5. Do you know of plaintiffs being arrested by order of the mayor of Mobile? when was this? on what pretense was the arrest made? was said Waring deprived of his liberty? if so, where was he detained and for how long, and state any thing else you may know of benefit to plaintiff.

HAMILTON, *For Plaint.*

Notice of Interrog's.

Court of Chancery.

STATE OF ALABAMA, *Mobile County.*

TO WILLIAM BOYLES, esq., greeting:

You will please take notice, that in a certain cause pending in our Court of Chancery for the first district of the southern chancery division of said State, at Mobile, wherein Moses Waring is complainant, and Mayor, Aldermen and Common Council *et al*, defendants, interrogatories to C. H. Minge, witness for the said complainant, have been this day filed this day in my office, which said interrogatories will remain on file as aforesaid for ten days, during which time you may file cross-interrogatories, if you think proper.

Witness, John M. Taylor. register of the Court of Chancery aforesaid at office this 28, day of January, A. D. 1867.

Attest. JNO. M. TAYLOR,
Reg. 1 Dis. So. Ch'y. Div. Ala. &c.

Sheriff's Return.

Rec'd 28, January 1867, and on the 29, January 1867, I
83 served a copy of the within notice of [of] interrogatories filed, also a copy of the interrogatories on Wm. Boyles esq.

M. D. GRINNELL, *She'ff M. C.*
By HENRY T. GAINS, *D. S.*

In Court of Chancery, at Mobile.

Cross Interrog's.

MOSES WARING
vs.
MAYOR, ALDERMEN, *et al.*

Cross-interrogatories to be propounded to C. H. Minge, a witness to be examined on the part of the complainant, in the above stated cause.

Cross-int. 1. Have you been engaged in business for Mr. Waring? if so, in what capacity, and for what length of time?

2. Did Mr. Waring, or his clerk or clerks, agent or agents, sell salt by the sack to different persons in Mobile, for consumption, between the 1 day of January, 1865, and the 1 day of January, 1866, and between the 1 day of January 1866, and the 21 day of June 1866? did you sell, or sell and deliver all the salt that was sold at Mr. Waring's warehouse between the 1 day of January 1866, and the 21 day of June 1866? were you present when such sale was made?

3. How many cargoes of salt did Mr. Waring purchase between the 1 day of January 1866, and 21 of June 1866? from whom was said salt purchased, were present when each purchase was made,

when and where was it delivered, were you present at the time each cargo was delivered?

4. Do you know of your own knowledge from what country said salt was brought?

5. If you should say that you gave notice to the tax collector of Mobile of Mr. Waring's claim of exemption from city taxation upon his sales of salt, then state whether there was any affidavit made in connection with the notice?

84 6. If you should say that Mr. Waring was arrested by order of General Withers, as mayor of the city of Mobile, then state if you can whether he was not arrested for a violation of a city ordinance for refusing to render an account of the gross sales of his merchandise?

W. BOYLES, *Sol. for Com'pt.*
SMITH & HERNDON,
Sols. for Comp't.

Filed 29, January, 1867.

JNO. M. TAYLOR, *Register.*

Chancery Court, first district southern chancery division.

THE STATE OF ALABAMA, *Mobile County*:

MOSES WARING
vs.
THE MAYOR, ALDERMEN, AND Common Council, *et al.*

Commission.

TO RICHARD B. OWENS, greeting:

Know ye, that we, in confidence of your prudence and fidelity have appointed you, and by these presents do give you full power and authority to take the deposition of C. H. Minge, a witness on the part of the complainant, in a cause pending in our said court, wherein Moses Waring, complainant, and the Mayor, Aldermen and Common Council of the city of Mobile, defendants, and therefore we command you, that at such time and place as you may appoint, you do cause the said C. H. Minge, to come before you and then and there examine him on oath, on the interrogatories and cross interrogatories annexed, and that you do take such examination and reduce the same into writing and return the same annexed to this writ, closed up under your seal into our Chancery Court, with all convenient speed, that the same may be read in evidence on the trial of the cause aforesaid.

Witness, John M. Taylor, Register of our said court at office,
85 and also the seal thereof, this second day of February, A. D. 1867.

Attest.

JNO. M. TAYLOR,
Register.

Deposition.

Deposition of Collier H. Minge, a witness produced, sworn and examined before me, this second day of February, 1867, at the office of M. Waring & Son, in the the city of Mobile, under and by virtue of the annexed commission, issued out of the Chancery Court for the first district of the southern chancery division of the State of Alabama, in a certain cause, wherein Moses Waring is complainant, and the Mayor, Aldermen and Common Council of the city of Mobile, *et al.* are defendants.

That is to say, in answer to the annexed direct and cross-interrogatories, said witness deposes and says, as follows:

1. To the first int., he says: I know the complainant, and am personally acquainted with some of the members of the city government; complainant has dealt in salt, since January, 1866, and before; said salt come from Great Brittain in ships, and is uniformly brought to this country in sacks; Mr. Waring has acquired said salt by the ship's cargo at a time, and he received it in the sacks, in which it was brought to the port; he has sold it in the same sacks, in which he received it, and at wholesale; he has sold it to grocers and other merchants in the city of Mobile.

2. To the second int., he says, they were not; he received the salt shortly after the arrival of the ship bringing it, and at the anchorage in the bay of Mobile, from 28 to 30 miles from the city; he received the salt from the vessel, and from the person in charge of her; and it was brought to the city in lighters, at the direction and expense of complainant.

3. To the third int., he says: A permit from the custom-
86 house is necessary before the ship can unload; said permits were delivered to the complanant, who put them in the hands of the lightermen, to enable him to get the salt from the ship, and bring it to the city.

4. To the fourth int., he says: I do know of such notice being served upon John Parham, city tax collector; I served it myself, said notice was in writing; I served it myself on the 18 June, 1866, and hereto attach a copy of the same, marked Exhibit "A."

5. To the fifth int., he says: I do not know of his being so arrested he was arrested a few days after the service of the notice above spoken of. I was present and saw him arrested; he was arrested by one of the police force of the city of Mobile; he was deprived of his liberty, and detained in the city guard-house for from eight to ten hours.

To the cross-interrogatories, C. H. Minge answers and says, as follows:

1. To the first cross-int., he says: I was Mr. Waring's clerk for 12 months, from 1 September, 1865.

2. To the second cross-int., he says: He did not, nor did any of his clerks or agents; he sold only to dealers; I did not sell all the salt there, between the said dates; I sold a large part of it; I was not present when each sale was made.

3. To the third cross-int., he says: I have not access to the books of Mr. Waring, and cannot give the number sacks brought by from memory; but I am informed Mr. Smith, the book-keeper, has been examined in this cause, and I refer to his statement on this point; said salt was purchased from the agents and consignees of foreign vessels in this port; it was delivered in the bay, on the arrival of the vessel; was never present when the cargoes were delivered down the bay.

4. To the fourth cross-int., he says: It was said to have been
87 brought from Great Brittain, and though I do not know it of my own knowledge, I have every reason to believe it was.

5. To the fifth cross-int., he says: No affidavit was made at the time, but I now swear that a notice, of which Exhibit "A," hereto attached is a copy, was served by me, and that said notice was read in my presence, by Mr. John Parham, city tax collector.

6. To the sixth cross int., he says, He was arrested by order of General Withers, but under what city ordinance I do not know, but have every reason to believe it was because of his refusal to render a statement of his sales.

C. H. MINGE.

And I, R. B. Owen, the commissioner aforesaid, hereby certify that at the time and place, in the caption to the foregoing deposition mentioned, I was attended by the said witness, and thereupon the foregoing deposition was taken and reduced to writing by me, in presence of said witness, who is personally known to me, and from his statements, and after carefully reading over the same to him, he signed his name thereto in my presence, as above written.

Witness my hand and seal, this 4 day of February, 1867.

[L. S.] R. B. OWEN, *Commissioner.*

Depositions for defendants.—Interrog's.

In chancery, at Mobile.

MOSES WARING
vs.
MAYOR, ALDERMEN AND COMMON Council of the city of Mobile, *et al.*

Interrogatories in behalf of defendants, to William Cottrell, Charle Lyons and Martin Robbins, material witnesses for defendants, residing in the city of Mobile.

88 S. H. PARIO, *Commissioner.*

1. Are you acquainted with the parties of this suit?

2. Do you not reside in the city of Mobile? If yea, in what business are you engaged? and how long have you been so engaged?

3. Did you not, at any time between the 1 day of February, 1865, and the 26 day of June, 1866, purchase any salt from Moses Waring,

or from any of his clerks or agents? if so, how often, and how much at each time, and what use did you make of it? Was it or not purchased for consumption? state fully.

4. Do you, or not, know of any person or persons who purchased salt from Moses Waring, or his agents or clerks, between the 1 day of January, 1865, and the 26 day of June, 1866? If yea, name each of them, where they resided at the time, and what business they were at the time engaged in? State if you can, whether the salt, so purchased, was or not for consumption?

5. State any other matter or thing within your knowledge, that may in any way whatever benefit the defendants, as fully and particularly as if specially interrogated thereto.

W. BOYLES, *Att'ys for Def'ts.*
SMITHS & HERNDON.

Filed January 24, 1867.

JNO. M. TAYLOR, *Register*

Notice of interrog's.

Court of Chancery.

THE STATE OF ALABAMA, *Mobile County:*

To Messrs. T. & P. HAMILTON, greeting:

You will please take notice, that in a certain cause, pending in our Court of Chancery, for the first district of the southern chancery division of said State, at Mobile, wherein Moses Waring is complainant, and Mayor, Aldermen, *et al.* are defendants; interrogatories to William Cottrell, Charles Lyons and Martin Robbins, witnesses
89 for the defendants, have been this day filed in my office, which said interrogatories will remain on file as aforesaid for ten days, during which time you may file cross-interrogatories, if you think proper.

Witness, John M. Taylor, Register of the Court of Chancery aforesaid, at office this 24 day of January, A. D. 1867.

Attest: JNO. M. TAYLOR,
Reg. 1 Div. So. Ch'y Dis. Al'a, &c.

Sheriff's return.

Rec'd 24 January, 1867, and on the same day I served a copy of the within notice of interrogatories filed, also a copy of the interrogatories on Peter Hamilton, esq., of the firm of P. & T. Hamilton.

M. D. GRINNELL, *Sh'ff, M. C.*
By HENRY T. GAINES, *D. S.*

Cross-interrog's.

In Chancery, at Mobile.

MOSES WARING
vs.
MAYOR, ALDERMEN, AND COMMON COUNCIL, of Mobile, *et al.*

Cross-interrogatories in behalf of complainant to William Cottrell, Charles Lyons, and Martin Robbins, witness for defendants.

1. If you say you have purchased salt from Waring within the time named, state in what quantities you made such purchases. Did you ever purchase at any time less than one sack of salt?

2. In what form of package is Liverpool salt usually brought to this country? Have you purchased considerably of such salt? In purchasing of Waring, state in what form of package did you purchase and receive that salt? Was it or not in such form and package as it is usually or uniformly brought into the United States?

3. What do you mean by consumption, as used in direct
90 interrogatory, and your reply thereto? Did you and your family use the salt purchased of Waring? or did you use it in some business in which you were engaged? State for what purpose you purchased said salt. Did you sell again the article or goods to which you applied said salt, or what use did you put it to, or was it wholly consumed by ordinary use in your family?

4. State any other matter or thing you may know that will benefit complainant. When did the blockade of the bay of Mobile cease? When was the port therein open for general trade, and the admission of goods from abroad?

HAMILTONS,
Sols. Comp't.

Filed 26 Jauary, 1867.

JNO. M. TAYLOR,
Register.

Commission.

Chancery Court, first district, southern chancery divisicn.

MOSES WARING
vs.
MAYOR, ALDERMEN, AND COMMON COUNCIL, of the city of Mobile, *et al.*

THE STATE OF ALABAMA, *Mobile County:*

To SAMUEL H. PARIO, esq., greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you full power and authority to take the deposition of William Cottrell, Charles Lyons, and Martin Robbins, witnesses on the part of defendants, in a cause pending in our said court, wherein Moses Waring is complainant, and Mayor, Aldermen, and Common Council, of the city of Mobile, *et al.*

are defendants, and therefore we command you, that at such time and place, or times and places, as you may appoint, you do cause the said William Cottrell, Charles Lyons, and Martin Robbins to come before you, and then and there examine them on oath, on the
91 interrogatories and cross-interrogatories annexed, and that you do take such examination, and reduce the same into writing, and return the same annexed to this writ, closed up, under your seal, into our said Chancery Court, with all convenient speed, that the same may be read in evidence on the trial of the cause aforesaid.

Witness, John M. Taylor, register of our said court, at office, and also the seal thereof, this thirty-first day of January, A. D. 1867.

Attest: JNO. M. TAYLOR,
Register.

Deposition.

STATE OF ALABAMA, *Mobile County:*

By virtue of the commission hereto attached, I have this 2 day of February, 1867, caused and called William Cottrell, Charles Lyons, and Martin Robbins, to come before me, for the purpose of taking their depositions to be used in evidence in a certain cause, wherein Moses Waring is complainant, and the Mayor, Aldermen, and Common Council, of the city of Mobile, *et al.*, are defendants, now pending in the Chancery Court, and the said William Cottrell and Charles Lyons and Robbins, being first duly sworn by me, to speak the truth, the whole truth, and nothing but the truth, in the premises, to the interrogatories hereto attached, answer and say:

To Martin Robbins:

Interrog. 1. I am acquainted with the parties to the suit.

2. I reside in Mobile; in the business of buying hides and merchandising, for twenty years. I bought salt from Moses Waring during that time; I generally buy from eight to twenty-five sacks at a time. I use it for the purpose of salting hides generally. It is purchased for consumption; sometimes I sell a sack or two to accommodate a customer.

4. Most all the merchants buy salt from Waring; commission merchants, who receive orders from the country bought from him.
92 I believe the salt so purchased was for consumption.

5. I believe the salt arrives in the cotton ships, and that Waring buys after it reaches Mobile.

MARTIN ROBBINS.

To Martin Robbins:

Cr.-int. 1. I buy generally from eight to twenty-five sacks at a time; I have never, since the time mentioned, bought less than one sack from Waring; previously to that time I have bought less than one.

2. It comes in sacks, that is, what comes to Mobile. I have pur-

chased about three or four hundred bags a year. I receive it in sacks said to contain four bushels each. It is usually brought to this port in sacks, and in sacks I bought it.

3. I mean by consumption that I use it in my business in salting hides; my family has used part of the salt purchased of Waring, and I also used in my business. I purchased it principally for salting hides. I sold the hides so salted, but not the goods upon which it was used in my family; it was not wholly used in the ordinary consumption of my family.

4. I know nothing to benefit the complainant in this suit. The blockade of the bay of Mobile ceased immediately after the occupation of Mobile by the Yankees. Very soon afterwards the port was open for general commerce.

MARTIN ROBBINS.

To William Cottrell:

Int. 1. I am.

2. I do not reside in the city. In the butchering business in Mobile for twenty-six years.

3. I have bought salt from Moses Waring since the surrender. I bought at one time between eighty and one hundred sacks. I used it partly for salting hides, and some of it for salting beef. It
93 was purchased for consumption in my business.

4. I do not know any persons who have purchased salt from Waring between the time mentioned.

5. I know nothing to benefit them.

Cr. int. 1. I purchased it in the amount of eighty to one hundred sacks. I never did.

2. In sacks. Not to any considerable quantities during the time stated. In sacks, it was.

3. That I used in salting hides and beef. No sir. It was too mean. I used it for my business. I did sell them again. It was not consumed by the ordinary use of my family.

4. I don't know any thing. I don't recollect. I do not recollect.

W. COTTRELL.

To Charles Lyons:

Interrog. 1. I know who the parties are.

2. I reside in the county. My business is in the city of Mobile. In butchering for twenty years.

3. Not that I know of to my knowledge. I have never purchased from him during that time.

4. Do not know any person that have purchased salt from Waring.

I know nothing.

CHARLES LYONS.

Cr. int. 1. I have never purchased any.

2. In sacks. I have never purchased to any extent of such salt. I have not purchased of Waring during the time stated.

3. Same as the first cross-interrogatory. Beyond this, know nothing of the matters propounded in these cross-interrogatories.

CHARLES LYONS.

And I, S. H. Pario, Commissioner, as aforesaid, do hereby certify, that I have personal knowledge of the identity of said witnesses;
94 that the foregoing depositions were taken in the as set forth in the caption, after said witness had been sworn and that the same was taken down and reduced to writing by me, in their presence, and was examined by the said witnesses; by their approval and subscribed is my presence; after which said deposition was sealed up by me, and addressed to the register in chancery, Mobile.

Witness my hand seal this 2d day of February, 1867.

[L.S.] S. H. PARIO,
Commissioner.

Interrogat's to J. C. Colsson.

MOSES WARING
vs.
MAYOR, ALDERMEN & COMMON COUNCIL OF the City of Mobile, *et al.*

Interrogatories in behalf of defendants, to J. C. Colsson, a material witness for defendants, residing in the City of Mobile.

S. H. PARIO,
Commissioner.

Interrog. 1. Are you acquainted with the parties to this suit?

2. Where do you reside? What business are you engaged in, and how long have you been so engaged?

3. If in answer to the three interrogatory, you should say, that you are now and have been in the employment of the government of the United States, at Mobile, then state the nature of your employment, and how long you have been employed? If you say your employment has been in connection with the collector of the port of Mobile, then, if you can, by reference to the books, at the custom-house, in Mobile, whether Moses Waring made entry of any vessel, at the custom-house in Mobile, between the first day of January, 1865 and the 26th day of June, 1866? And whether, during that,
95 he paid any duties on imported goods to the collector of the port of Mobile, or any one for him, or any one connected with the office, authorized by the collector. between the first day of January, 1865 and the 26th day of June 1866?

4. What connection have you with the books at the custom-house at Mobile, between the 1st day of January, 1865, and the 26th day of June, 1866, and since that time and now? Are you or not proper custodian of said books?

Please attach to your answer to this interrogatory, the names of all vessels which were entered at the custom-house, in Mobile, that were from Liverpool, laden with salt, between the 1st day of January, 1865, and the 26th day of June, 1866? And to whom consigned, and by whom entered, and who, in each case, paid the duties?

W. BOYLES,
Att'y for Def'ts.
SMITHS & HERNDON.

Notice of interrog's.

Court of Chancery.

THE STATE OF ALABAMA, *Mobile County*:

To Messrs. T. & P. HAMILTON, greeting:

You will please take notice that in a certain cause pending in our Court of Chancery for the first district of the southern chancery division of said State, at Mobile, wherein Moses Waring is complainant, and Mayor, Aldermen *et al.* are defendants. Interrogatories to J. C. Colsson, witness for the defendants, have been this day filed in my office, which said interrogatories will remain on file, as aforesaid, for ten days, during which time you may file cross-interrogatories, if you think proper.

Witness John M. Taylor, Register of the Court of Chancery aforesaid, at office, this 24th day of Jan., A. D. 1867.

Attest. JNO. M. TAYLOR,
Reg. 1 Dist. S. Ch'y Div. Al'a.

Interrog. filed, January 24, 1867.
JNO. M. TAYLOR, *Register.*

96 *Sheriff's return.*

Rec'd 24 January, and on the same day, I served a copy of the within notice of interrogatories filed; also a copy of the interrogatories on P. Hamilton, esq., of the firm of P. & T. Hamilton.

M. D. GRNINELL, *Sh'ff.* M. *C.*
BY HENRY D. GAINES, *D. S.*

Cross-interrog's.

Court of Chancery.

MOSES WARING
vs.
MAYOR, ALDERMEN & COMMON COUNCIL OF Mobile *et al.*

Cross-interrogatories for complainant to J. C. Colson, a witness for defendants:

1. How is the duty that is required by the United States upon foreign salt ascertained? Is the amount of duty upon salt arrived at by count or by weight, or in what manner? Is the duty levied by the sack, by the measure or by the weight of the article?

2. If you say, the duty is ascertained by weight, where is the weighing done? Is it done upon the ship or upon the land? Is upon the land, state where the weighing is done, to ascertain the amount of duty due upon a cargo of foreign salt imported into Mobile? Is such cargo weighed according to the usual course of business, before or after it is placed on the wharf in the city of Mobile?

3. When is the duty on such cargo according to the usual course of business paid? Is it paid, or can it be paid before the weight is ascertained by the proper officer of the customs? Do the officers ever receive, as conclusive of the weight or amount of the cargo, the invoices produced before them?

4. If such invoices are produced, for what purpose connected with the duty are they received? Are they received for any purpose other than to make an estimate of the amount of deposit to be required? Is such deposit required before the cargo is permitted to
97 be unloaded from the ship, and how is the amount arrived at? At what time and under what circumstances are the hatches of a foreign ship, or a ship from a foreign port allowed to be removed? For this to be done, what is required of the ship or her agents?

5. Do all ships from foreign ports that anchor in the bay of Mobile unlade their cargo there? Do not ships from foreign ports, that come into the bay, occasionally, or frequently go to other ports without unloading their cargo at Mobile, and deliver their cargo at such new port, after leaving the bay of Mobile? Are all goods that are brought by vessels from foreign ports into the bay of Mobile, delivered at Mobile?

6. Do you know, or can you say, who has furnished all the money that has been paid for duties on salt during the time enquired about in direct interrogatories, or do you only mean to say from whence the money came to your hand, or to the hands of the proper custom officer?

How do the officer of customs at Mobile know when a vessel in the bay of Mobile is intended to be unladen in the bay and her cargo brought to Mobile? Is or not any application made to the custom-house in the name of the vessel for that purpose, and by whom?

State all you know that will benefit complainant in this suit.

HAMILTON,
Sol. for Comp't.

Filed 26 January, 1867.

JNO. M. TAYLOR,
Register.

Commission.

STATE OF ALABAMA, *Mobile County:*

MOSES WARING
vs.
MAYOR, ALDERMEN, AND COMMON COUNCIL of City of Mobile.

98 Chancery Court, first district southern chancery division.

To SAMUEL H. PARIO, greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you full power and authority to take the deposition of J. C. Colsson, witness on the part of defendants, in a cause pending in our said court, wherein Moses Waring is complainant, and the Mayor, Aldermen, and Common Council of the City of Mobile *et al.*, defendants; and therefore we command you, that at such time and place, or times and places, as you may appoint, you do cause the said J. C. Colsson to come before you, and then and there examine him on oath on the interrogatories and cross-interrogatories annexed; and that you take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seal, into our said Chancery Court, with all convenient speed, that the same may be read in evidence on the trial of the cause aforesaid.

Witness, John M. Taylor, register of our said court, at office, and also the seal thereof, this thirty-first day of January, A. D. 1867.

Attest:

JNO. M. TAYLOR,
Register.

Deposition.

STATE OF ALABAMA, *Mobile County:*

By virtue of the commission hereto appended, I have, this 7 day of February, 1867, caused and called J. C. Colsson to come before me, for the purpose of taking his deposition, to be used in evidence in a certain cause pending in the Chancery Court, wherein Moses Waring is complainant, and the Mayor, Aldermen, and Common Council of Mobile, *et al.* are defendants; and the said J. C. Colsson being first duly sworn by to speak the truth, the whole truth, and nothing but the truth in the premises to the
99 interrogatories hereto attached, answers and says:

Interrog. 1. I am acquainted with the parties to the suit.

2. Mobile. In the custom-house business. Fourteen years, less two months.

3. I have acted in capacity of import clerk about twelve years. Moses Waring never made entry of a vessel during that time. He has paid some duties to the authorized persons.

4. I have acted as auditor and keeper of the custom-house books. I am the proper custodian of said books.

5. I have hereto append a list as required.

J. C. COLSSON.

List of vessels entered with salt from 1st January, 1865, to June 26, 1866.

Vessels.	Consignees.	Sacks.
Margaret Pugh	Fowler, Starnard & Co.	5,998
Maxwell	do	7,602
Bell Carigg	D. Wheeler & Co.	4,492
Tiger	do	3,345
John Meyall	John More	2,817
Norwood	D. Wheeler & Co.	9,805
Aline	A. J. Ingersoll & Co.	6,990
Adept	Tuthill & McNeil	4,450
Rix	Fowler, Starnard & Co.	2,971
Arthur White	D. Wheeler & Co.	2,005
Dakotah	do	5,245
Compeer	W. H. Ketcham	8,899
Chance	D. Wheeler & Co.	5,652
David Cannon	do	1,996
Ryarson	Smith & Ross	2,998
Superb	A. J. Ingersoll & Co.	6,959
Shakspeare	do	5,159
New Brunswick	do	5,909
Clara Perkins	W. Cannon & Co.	2,399
D. Hoadley	Smith & Ross	2,993
Martha	D. Wheeler & Co.	6,350
Tasman	do	5,431
100 Carlotta	W. Cannon & Co.	4,082
Tiger	D. Wheeler & Co.	2,032
Sacks		119,576

Mobile, Feb. 5, 1867.

Warehoused in M. Waring's W. H.

Vessels.	Consignees.	
Aline	A. J. Ingersoll & Co.	2,025
Geo. Hulbert		4,980
Halden		13,000
Ironsides		10,989
Ruth		12,384
Annie Kimball		7,900
		51,278

Recapitulation.

Entered for consumption on arrival	119,576
warehousing	51,278
	170,854

J. C. COLSSON.

And I, S. H. Pario, commissioner as aforesaid, further certify, that I have personal knowledge of the aforesaid witness; that the aforesaid deposition was taken in the manner as set forth in the caption, after said witness had been sworn, and that the same was reduced to writing by me in his presence, and was examined by the said witness, and by him understood, approved, and subscribed in my presence; after which, said deposition was sealed up by me, and delivered to the register in chancery, Mobile, Alabama.

Witness my hand and seal, this 7th day of February, 1867.

[s.] S. H. PARIO,
Commissioner.

Cross-interrogatories:

Cr.-in. 1. The duty required by the United States is ascertained by the actual weight of the salt and the number of sacks, the salt being weighed at the wharf in Mobile by the U. States public
101 weigher. In order to obtain a permit to discharge the salt into the lighters, a deposit of coin is made generally by the consignee of the vessel, and the same is liquidated after having ascertained the true weight of the salt by both count and weight, the duty is levied by the weight and number of sacks.

2. The weighing is done at the wharf in Mobile. It is done upon the land. It is generally weighed at the wharf of Moses Waring; at the time it is discharged from the lighter at the wharf in Mobile it is weighed.

3. The duty is paid at the cashier's desk of the custom-house, a deposit is made to take out the permit, as I stated above, which is liquidated upon the return of the weigher of the proper weights. The officers never receive, as conclusive of the weight or amount of the cargo, the invoices produced before them.

4. They are received to be attached to the entry and compared with the weigher's return, in order to ascertain its correctness, as regards to the quantities and prices, and not as regards the weight, only to make an estimate of the amount of deposit to be received. The deposit is required before the cargo can be unladen from the ship and is arrived by calculating the duties at 24c. per hundred pounds, being equal to 50c. per sack, or thereabouts, I cannot tell. The law forbids the inspector to allow the hatches to be removed until the permit is received from the custom-house.

5. Not all; some small vessels discharge their cargoes at the wharf in Mobile, not frequently—only two, to my knowledge, since

1865. All cargoes are delivered in the district of Mobile. We consider it as delivered, all except the two cargoes mentioned above, which were transported under bond.

6. Either by the consignee or agent of the vessel, or the owner of the salt; I mean to say that the money comes from the above-mentioned parties. I cannot say who furnishes the money to them.

7. By the report of the master of the vessel by producing his manifest at the custom-house on entry of vessel. The application is made by the master, as stated above.

102 I know nothing that can benefit the complainant in this suit, because I am unacquainted with the tenor of the suit. I consider Mr. Waring the owner of all cargoes of salt landed at Mobile—they going into his warehouse. This is to the best of my knowledge; there being no other person connected with the salt business on a large scale in Mobile.

J. C. COLSSON.

And I, S. H. Pario, commissioner, as aforesaid, further certify that I have personal knowledge of the identity of the said witness; that the aforesaid deposition was taken in the manner set forth in the caption, after the said witness had been sworn, that the same was reduced to writing by me in his presence, and, being closed, was by him examined, approved, and subscribed in my presence, after which said deposition was by me sealed up and directed to the Register in Chancery, Mobile, Alabama.

Witness my hand and seal this the 7 day of February, 1867.

[SEAL.] S. H. PARIO.
Commissioner.

Interrog's to S. S. Warner.

MOSES WARING
vs.
MAYOR, ALDERMAN, and COMMON COUNCIL OF MOBILE *et al.*

In Chancery at Mobile.

Interrogatories to be propounded to Capt. Samuel S. Warner, a material witness in behalf of defendants in the above-stated case.

S. H. PARIO,
Commissioner.

Interrog. 1. Are you acquainted with the parties to this suit?

2. Where do you reside, and what business do you follow?

103 If you say you reside in Mobile then state how long you have lived in Mobile and what business you have followed?

3. Are you not connected with the Treasury Department of the United States at Mobile? If yea, in what capacity and how long have you been so connected?

4. Do you or not know whether the most, if not all the vessels, which sail from Liverpool to the port of Mobile discharge their cargoes in the bay of Mobile? If yea, in what way is it done, and why the cargo is discharged in the bay of Mobile? Is it not because of the shallowness of the water said vessels are unable to come nearer to the city of Mobile?

5. Do you or not know whether when a vessel from Liverpool, which is bound for the port of Mobile, casts anchor in the bay of Mobile, with the intention to unlade or discharge her cargo, that she is boarded by the revenue officers of the United States at Mobile; if so, for what purpose, and what is done by them after she is boarded by said officers? Do they not raise the hatches of the vessel and examine the cargo? Do they not examine the manifest of the vessel? State fully all that is done in such case.

6. Do you or not know what is the uniform construction of the Treasury Department of the United States as to what constitutes the port of Mobile? If yea, state fully. State, if you can, whether, according to the construction given by the Treasury Department of the United States, duties upon imported goods upon a vessel in the bay of Mobile are paid as soon as she casts anchor with the intention to unlade or discharge her cargo.

7. Do you or not know whether, according to the usual practice and understanding of the Treasury Department of the United
104 States, that when a vessel from Liverpool bound to the port of Mobile casts anchor in the bay of Mobile, with intention to unlade or discharge her cargo, that then the importation of the cargo is completed?

8. Do you or not know whether, according to the practice and understanding of the Treasury Department of the United States, the bay of Mobile is included within the port of Mobile? If yea, state fully and particularly?

W. BOYLES, *for Def'ts.*
SMITHS & HERNDON.

Filed January 26, 1867.

JNO. M. TAYLOR, *Register.*

Notice of Interrog's.

Court of Chancery.

THE STATE OF ALABAMA, *Mobile County.*

To the Messrs. HAMILTON, Greeting:

You will please take notice that in a certain cause pending in our Court of Chancery, for the first district of the southern chancery division of said State, at Mobile, wherein Moses Waring, complainant, and Mayor, Alderman, and Common Council *et al.* defendants. Interrogatories to Samuel S. Warner, witness for the said defendants, have been this day filed in my office, which said interrogatories will

remain on file, as aforesaid, for ten days, during which time you may file cross-interrogatories if you think proper.

Witness John M. Taylor, register of the Court of Chancery aforesaid, at office, this 26 day of January, A. D. 1867.

Attest: JNO. M. TAYLOR,
Register.

Sheriff's Return.

Rec'd 26 January, 1867, and on the same day I served a copy of the within notice of interrogatories filed, also a copy of the
105 interrogatories on Peter Hamilton, of firm of Hamilton's.

M. D. GRINNELL,
Sh'ff Mobile County.
By HENRY T. GAINES, *D. S.*

Cross-interrog's.

Cross-interrog. 1. When did you come to Mobile? When was the port of Mobile thereon open to general trade?

2. Have you any other connection with the Treasury Department of the United States, than as master or captain of the revenue cutter upon this station. State precisely what is your duty under that appointment.

3. If you say that vessels from Liverpool for Mobile discharge their cargoes in the bay of Mobile, state at what distance from the city such discharge is usually made. If you know, state to whom the salt so brought into the bay of Mobile has been delivered, or for whose account such delivery is made, and by whom received, and for whose account.

4. The first paragraph of fifth direct interrogatory is objected to, because it is leading; because one element of the inquiry there made is the intention of the director or controller of the vessel, of which the witness cannot know; because the inquiry, instead of calling for facts, calls for conclusions of law; because it involves a conclusion of law—not waiving said objections, but insisting thereon, complainant asks: Is not every vessel coming into the bay of Mobile, and casting anchor therein, boarded by a revenue officer; what is your duty in respect to vessels so entering the bay of Mobile?

The remaining questions of fifth interrogatory are objected to, because it is of no consequence to complainant, and cannot justify the claims of defendants what the revenue officer may do in the premises. The action of these officers can have no influence
106 to effect the rights of complainant; because his rights depend upon law, and not upon the acts of such officers; not waiving his said objections, but insisting thereon, defendant propounds: If you say the revenue officers raise the hatches of such vessels, by what authority do they act, and whence and from whom does it proceed? Do those officers upon entering on such vessel proceed to raise the hatches and examine the cargo, or do they wait for some

authority from some other officer before proceeding; and from whom, and how do they receive it?

5. The 6th direct interrogatory is objected to, because the construction of the Treasury Department cannot be shown by parole testimony; cannot be shown by the parole testimony of a subordinate officer of the revenue service; cannot be shown by the captain's of a revenue cutter evidence; hence even if proved in a lawful way, the construction of the Treasury Department upon a law of the United States would not be authority with the judiciary of the land, and such testimony is irrelevant and impertinent to the issue; because the inquiry involves a matter of intention by third parties, that is not within the knowledge of the witness—not waiving said objections, complainant inquires: By whom, and by what authority are the collection districts, and ports of entry established?

6. The same objection above last made to the 6 direct interrogatory is also made to the 7 direct interrogatory.

7. The same objection above last made to the 6 and 7 direct interrogatory is made to 8 direct interrogatory.

8. Under whose control and direction are you in your official duty? To whom do you report and from whom receive instructions?

9. Do not vessels from foreign ports that cast anchor in the bay of Mobile, sometimes weigh anchor again, and proceed to other ports, without breaking bulk or [or] unloading their cargo.

HAMILTONS, *for Comp't.*

Filed January 28, 1867.

JNO. M. TAYLOR, *Register.*

107 *Commission.*

THE STATE OF ALABAMA, *Mobile County*:

MOSES WARING
vs.
MAYOR, ALDERMEN, and COMMON COUNCIL OF Mobile, *et al.*

Chancery Court, first district southern chancery division, to Samuel H. Pario, esq., greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents, do give you full power and authority to take the deposition of Capt. S. S. Warner, a witness on the part of defendants in a cause pending in our said court, wherein Moses Waring is complainant, and Mayor, Alderman, and Common Council of the city of Mobile, *et al.*, are defendants, and therefore we command you, that at such time and place, or times and places as you may appoint, you do cause the said Capt. S. S. Warner to come before you, and then and there examine him on oath on the interrogatories and cross-interrogatories annexed, and that you do take such examination, and reduce the same into writing, and return the same annexed to this writ, closed up under your seal into our said Chancery Court with all convenient speed, that the same may be read in evidence on the trial of the cause aforesaid.

Witness John M. Taylor, register of our said Chancery Court, at office and also the seal thereof, this thirty-first day of January, A. D. 1867.

Attest:

JNO. M. TAYLOR, *Register.*

Deposition.

STATE OF ALABAMA, *Mobile County:*

By virtue of the commission hereto appended, I have, this 5 day of February, 1867, caused and called Capt. S. S. Warner to come before me, for the purpose of taking his deposition, to be used in evidence, in a certain cause pending in the Chancery Court, wherein Moses Waring is complainant, and the Mayor, Aldermen, and Common Council of the city of Mobile, *et al.*, are defendants, and the
108 said S. S. Warner, being first duly sworn by me to speak the truth, the whole truth, and nothing but the truth in the premises to the interrogatories hereto attached answers and says:

Interrog. 1. Not acquainted with either party.

2. My present residence is on board of the revenue cutter Morris, in the custom district of Mobile; I am captain of a revenue cutter; I have been in the Mobile Custom District about a year and a half, and in the United revenue service six years.

3. I am under the orders of the Secretary of the Treasury of the United States, as captain of the revenue cutter Morris for about six years.

4. Yes, they do. It is discharged in lighters, because the shallowness of the water does not permit the vessels to go to the city; yes, it is.

5. She is; she is boarded to see whether she has the proper papers for entering the custom-house, and examined to see if she has any goods not manifested. Not always; sometimes they are raised. It depends upon what kind and what quantity of cargo the vessel has on board. They always examine the manifest when they have one.

6. The construction of the department is that inside of the outer bar of Mobile bay is the port of Mobile. That is my supposition of the construction. I should suppose they are; there has to be a deposit made of coin at the custom-house, before the vessel is permitted to unlade.

7. I believe that is so considered; vessels in the Liverpool trade never come further than the bay of Mobile. That is where they deliver their cargo.

8. The general understanding of the Treasury Department is that the bay of Mobile is included in the port of Mobile.

SAMUEL S. WARNER.

Cross-interrogatories.

On the 28 or 29 of September, 1865; that I cannot tell you. I don't recollect the date.

109 2. I have not. To board all foreign vessels, examine their manifests, and certify that the manifests were delivered as true

manifests; and to examine the ship to discover whether there is any part of the cargo not manifested.

3. From twenty-two to twenty-six miles from the city of Mobile. That I don't know anything about.

8. From the Secretary of the Treasury, through the collector of the port of Mobile generally, sometimes direct from the Secretary of the Treasury.

8. Yes; I believe sometimes they do.

SAMUEL S. WARNER.

And I, S. H. Pario, commissioner as aforesaid, do further certify, that I have personal knowledge of the identity of said witness; that the foregoing deposition was taken in the manner as set forth in the caption, after said witness had been sworn, and that the same was taken down and reduced to writing by me in his presence, and was examined by the said witness, and by himapproved and subscribed in my presence, after which said deposition was sealed up by me, and delivered to the register in chancery, Mobile.

Witness my hand and seal, this 5 day of Feburary, 1867.

S. H. PARIO, *Commissioner*.

Interrog.

In Chancery Court at Mobile.

MOSES WARING
vs.
THE MAYOR, ALDERMEN, AND COMMON COUNCIL of Mobile.

Interrogatories to be propounded to Daniel Wheeler and Daniel McNiel, of Mobile, material witnesses for defendants in the above-stated cause—Daniel P. Bestro and Walter Weaver, esqrs., Commissioners.

Int. 1. Do you reside in Mobile? And what business were you engaged in Mobile in the years 1865 and 1866?

2. Did you or not between the 1 day of January, 1865, and the 26 day of June, 1866, import into Mobile any salt from foreign countries? or were you during said time the consignees of any cargoes of salt from a foreign country? If so, how many cargoes did you so import, or were so consigned to you?

3. Did you during said time agree to sell, or sell to Moses Waring, any salt? If so, please state how much, and state also particularly the usual mode and manner of dealing between Mr. Waring and yourself, in reference thereto; and if there were any transaction differing from the usual mode, please state it, with all the particulars as to time, amount of salt, &c.

4. If you state you usually sold Mr. Waring salt "to arrive," please explain what this means; whether the amount or quantity was then fixed, or the price agreed on or paid; or whether these were left to

be determined and agreed upon after the salt arrived within the port of Mobile and the cargo inspected.

5. Suppose the salt should be lost or damaged after such agreement, and before it is delivered to Mr. Waring, whose loss it be? At whose risk is the salt before the actual delivery to Mr. Waring? And if insured, on whose account and for whose benefit?

6. During the time inquired of, who made the entry of the salt at the custom-house? who made the affidavit thereto? who paid the duties, or to whom were they charged in the custom-house? If you state that Mr. Waring furnished the money to pay the duties, were not these duties or charges put on as a part of the price of the salt, and agreed at the time of the sale to be so considered?

111 7. When Mr. Waring paid you for the salt, did you usually give him a receipt therefor? If so, please state how such receipts were written and how signed, and if you can attach a copy of the same.

8. If you know any other matter or thing that would benefit the defendants in this cause, please state the same as fully and particularly as if you were specially interrogated thereto.

SMITHS & HERNDON,
Def'ts Sol's.

Filed Jan. 28, 1867.

JNO. M. TAYLOR, *Register.*

Notice of interrog's.

Court of Chancery.

THE STATE OF ALABAMA,
Mobile County:

To the Messrs. HAMILTON, greeting:

You will please take notice, that in a certain cause pending in our Court of Chancery for the first district of the southern chancery of said State, at Mobile, wherein Moses Waring is complainant, and mayor, aldermen, *et al.*, defendants, interrogatories to Daniel Wheeler and Daniel McNiel, witnesses for the said defendants, have been this day filed in my office, which said interrogatories will remain on file as aforesaid for ten days, during which time you may file cross-interrogatories if you think proper.

Witness, John M. Taylor, register of the Court of Chancery aforesaid, at office, this 28 day of January, A. D. 1867.

Attest: JNO. M. TAYLOR,
Register, &c.

Sheriff's return.

Rec'd January 28th, 1867, and on the same day I served a copy of the interrogatories, also, a copy of the within notice of interrogatories filed on Peter Hamilton, esq., of the firm of P. & T. Hamilton, esq'rs.

M. D. GRINNELL,
Sheriff M. C.
By HENRY T. GAINES, *D. S.*

112 *Cross-int.*

MOSES WARING
vs.
MAYOR, ALDERMEN AND COMMON COUNCIL OF the city of Mobile, *et al.*

Cross-interrogatories for complainant to Daniel Wheeler and Daniel McNiel, witnesses in behalf of defendants:

1. Are you a member of either of the board of aldermen or common council of Mobile? And if so, of which? Are you a member of any committee of said boards, to whom matters of law or litigation, in which the city is concerned, is generally referred? Have you advised upon, or been consulted as such committee man, in relation to this litigation? Have you expressed any opinion, and if so, what, upon the merits of this controversy? Have you or not approved the claim asserted by the mayor or city authorities to coerce from plaintiffs the payment of the tax demanded of him upon his sales of salt?

The complainant objects to the examination by defendants of any person as a witness in its behalf, who is a member of the city corporation, because he is a party to the suit, and because he is interested therein.

2. Complainant objects to the second direct interrogatory where it asks of the witness if he "imported" into Mobile any salt from foreign countries, because the question at issue is upon the importation and who is the importer, and that must be passed upon by the court, and not by the witness. Not waving said objections, but insisting thereon, complainant inquires: When did your agency with regard to any cargoes of salt in your charge, cease? Was it before or after the arrival of the salt in the city of Mobile? To whom was said salt delivered, and at what place was it so delivered, and how far from the city of Mobile?

To Daniel McNiel—

113 3. If you sold any salt to Moses Waring, were you the owner of the salt, or to whom did it belong, and for whom were you acting? What became of that salt? Was any of it, and if so, how much, sent abroad to some town or port beyond the State of Alabama?

To both of said witnesses:

Where and at what point, in or out of Mobile was the salt received by Waring? By whom, or under whose direction was the salt brought from the ship, or vessel to the city of Mobile?

4. Was the salt sold to Waring before or after it was unladen from the ship? Was it before or after the same was entered at the custom-house, for payment of duty? Was it before or after permit to unload the ship was obtained from the custom-house? Was it before or after bulk was broken? Was it before or after the hatches of the ship were taken off to unload the cargo?

5. How is the duty upon a cargo of salt ascertained? By weight or count? At the time of such weighing or counting, who is the owner of the salt?

6. According to the usual course of business at the custom-house, who gives the permit to unlade the cargo of a ship, destined for Mobile? Is it or not necessary to obtain such permit? According to the usual mode of proceeding in the case of foreign salt, to whom is such permit handed? If you say to Waring or some one for him, why is it delivered to Waring? Is it so delivered to him as your agent or for his own account? And for what purpose is it delivered to him? And what does he do with such permit?

7. If in answer to any direct interrogatory you speak of the port of Mobile, what do you mean by the port of Mobile?

8. Complainant objects to the 5 interrogatory, because it calls for opinion of witness, or for a legal conclusion, which the witness is incompetent to give; not waving said objection, did any case of loss ever arise in any transaction between you and Waring relating
114 to salt?

9. To whom do the envoices or original papers showing cost or value of the salt, come? Are they required to be produced, and verified by affidavit at the custom-house? Who can best verify them as originals?

10. Do all salt laden vessels, that enter the bay of Mobile, unlade their cargo in the bay? Do not some of them afterwards sail for other ports with their cargoes? When is it known, or by what act on the part of the ship, her master, or agent, is it fixed that she is to unlade her cargo in this district? To what point, place, or city, is the cargo of all vessels, destined for the port of Mobile, carried and landed? Where bills of landing are signed in behalf of a ship for cotton, from the port of Mobile to the port of Liverpool, where does such ship receive such cotton? Where bills of lading are signed in behalf of ship, for goods from the port of Liverpool, or the port of New York to the port of Mobile, where, at what place are the goods delivered to the consignee? Who bears the charge of transportation between the ship's anchorage in the bay and the wharf at Mobile? State all you may know that will benefit the plaintiff in this suit.

HAMILTONS,
Compl't Sol's.

Filed Febr'y 1, 1867.

JNO. M. TAYLOR,
Register.

Commission.

THE STATE OF ALABAMA, *Mobile County:*

MOSES WARING
vs.
THE MAYOR, ALDERMEN, AND COMMON COUNCIL of the City of Mobile, *et al.*

Chancery Court, first district southern chancery division.

To DANIEL O. BISTOO, AND WALTER WEAVER, Esq's, greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you or any one of you, full power and authority to take the depositions of Daniel
115 Wheeler, and Daniel McNeel, witnesses on the part of defendants, in a cause pending our said court, wherein Moses Waring is complainant, and the Mayor, Alderman and Common Council of the city of Mobile defendants, and therefore, we command you, or any one of you, that at such time and place, or times and places as you may appoint, you do cause the said Daniel Wheeler and Daniel McNeil to come before you, or either of you, and then and there examine them on oath on the interrogatories, and cross-interrogatories, annexed, and that you, or either of you, do take such examination, and reduce the same into writimg, and return the same annexed to this writ, closed up under your seal, or the seals of any one of you, into our said Chancery Court, with all convenient speed, that the same may be read in evidence, on the trial of the cause aforesaid.

Witness, John M. Taylor, register of our said court, at office and also the seal thereof this first day of February, A. D. 1867.

Attest:

JNO. M. TAYLOR,
Register.

Filed February 5th, 1867.

JNO. M. TAYLOR,
Register.

Deposition.

MOSES WARING
vs.
THE MAYOR, ALDERMEN, AND COMMON COUNCIL *et al*, of Mobile.

Before me, Daniel P. Bestoo, one of the commissioners, appointed to take the testimony of Daniel Wheeler, in the above case, personally appeared the said Wheeler, who being by me duly sworn, deposes and says as follows, to wit:

Int. 1. To 1 direct int. he says: I do reside in Mobile, and have

done so for thirty-four years; and was engaged in the shipping and commission business during the years of 1865, and 1866.

2. To 2 direct int. he says: The firm of Daniel Wheeler &
116 Co., of which I am a partner, during the time mentioned, have been the consignees of various cargoes of salt, from foreign countries; I cannot refer to them, and hence cannot tell the number without taking more time than an answer to this interrogatory will permit.

3. To the 3 direct int. he says: We have sold Mr. Waring within the prescribed time several cargoes of salt. In some cases we have sold them, to arrive, but in most cases, we have sold them on board the ships in the bay. I do not know any difference between our mode of selling, and that of other persons.

4. To 4 direct in. he says: In our sales of salt, if sold to arrive, in the event of non-arrival, the sale is cancelled. In all our sales, the quantity on board the ship is ascertained from the report of the custom-house officers, who delivered the cargo at the ship, the amount is not exactly known, but the price is fixed upon.

5. To 5 direct in. he says: If the salt is lost on the ship before delivery, it is the loss of the owner, if after delivery from the ship to the lighter, it is the loss of Mr. Waring. The risk of salt from the ship to the city is on the purchaser, if sold to be taken from along side of the ship in the bay.

6. To 6 direct in. he says: The entry of the salt is made by the consignees; the affidavit is made by the same, and they also pay the duties, when the permit of discharge is delivered; unless it is placed in bond, and the duties payable afterwards, which was not done during the time enquired about. In some cases we have received funds from Mr. Waring to pay duties, which is deducted from the amount of sale.

7. To 7 direct in. he says: The charge of the cash, and collection of bills have always been done by my partner, Mr. Owen. I presume, if at any time, I received money from Mr. Waring, it would
117 have been required of me to give a receipt.

8. To direct int. he says: I do not know any other matter that will benefit the defendant in this case.

To the cross-interrogatories propounded to witness, Daniel Wheeler, he says as follows, to wit:

Cross 1. To 1 cross-in.: I am not a member of either of the boards of aldermen, or common council of the city of Mobile, nor of any committee therewith, nor have I expressed any opinion in regard to the merits of this controversy.

2. To 2 cross-in. he says: My agency ceased in almost every instance wherein the proceeds of the salt had been applied to the expenses of the ship, usually called disbursements, always after the arrival of the salt in the city of Mobile; the salt was delivered to the purchaser along by the side of the vessel on which it had come, about 28 or 30 miles from the city of Mobile.

3. To 3 cross-in. he says: The salt was received by Mr. Waring alongside of the ship, in the bay of Mobile; and in almost every

case the salt was brought from the vessel to the city by his direction

4. To 4 cross-in. he says: The salt was sold to Mr. Waring before it was unladen from the ship, almost, if not in every instance before the same was entered at the custom-house for payment of duty, and before the permit of discharge was secured from the custom-house. I do not know the course of ships in regard to hatches, but presume the permit to unlade would be before the breaking of the bulk.

5. To 5 cross-in. he says: The duty upon a cargo of salt is
118 ascertained by weight, the weighing is done in the city, at which time the purchaser is the owner.

6. To 6 cross-in. he says: Mr. Owen has always attended to this department of our business, but to the best of my knowledge and belief the deputy collector gives the permit, which said permit I consider necessary to be obtained, in order to procure the salt. This permit is handed to Mr. Waring, as the purchaser of the salt, and he receives the salt from the vessel upon said permit.

7. To 7 cross-in. he says: I have always considered the bay included in the expression "Port of Mobile."

8. To 8 cross-in. he says: Not that I am aware of.

9. To 9 cross-in. he says: The invoices usually come to the consignees of the ship; they are required to be produced at the custom-house; but as regards their being required to be verified by affidavit I cannot say; said invoices are usually certified or verified, by the American Consul at the port of departure.

10. To 10 cross-in. he says: All salt vessels do not discharge their cargoes, and some have left for other ports without disposing of cargo; the disposition of the salt by sale determines her delivery. If the salt is not sold, the departure of the vessel declares the non-delivery. Cargoes destined for the port of Mobile are landed in the city unless otherwise expressed in the bill of lading. Although the cotton does not reach the ships until in the bay, the lighter is considered the ship, and bills of lading are given, if required, when the cotton is on board the lighter. When bills of lading are signed from the port of Liverpool or New York, unless otherwise expressed, the goods are delivered to the consignee at the wharf, at the city of Mobile. If to be delivered at the city, the ship pays the charge
119 of transportation. I know nothing more that will benefit the plaintiffs in this suit.

DANIEL WHEELER.

Deposition of Daniel McNeil.

In the Chancery Court at Mobile.

MOSES WARING
vs.
THE MAYOR, ALDERMEN, AND COMMON COUNCIL of Mobile, et al.

Before me, Dan'l P. Bestoo, one of the commissioners appointed to take the testimony of Daniel McNeil, in the above cause, personally

appeared the said McNeil, who being duly sworn deposes and says as follows, to wit:

1. To 1 direct in. he says: I reside in Mobile, and was engaged in business in the years 1865 and 1866, as a commission merchant.

2. To 2 direct in. he says: I imported salt in April, 1866; was consignee at that time of one cargo salt, and only one during the time specified in this interrogatory.

3. To 3 direct in. he says: I sold one cargo of salt to Moses Waring during the time specified. The salt to be paid for on the proper delivery from the ship to the lighter or barge. No transaction between Mr. Waring and myself was different from the usual mode of dealing in the sale of salt or other articles.

4. To 4 direct in. he says: I did not sell "to arrive," but sold as stated above, the price to be paid upon the delivery.

6. To the 6th direct int. he says: The consignee of a cargo of any kind makes the entry at the custom-house, and pays the duty; he also makes the affidavit. The purchaser, of course, furnishes the means, indirectly, to pay the duty, for the reason that such is a part of the cost of the article, but he pays the duty in this indirect way only.

5. To direct in. he says: Salt sold in the bay is deliverable there. It is at the risk of the owner until the delivery from the ship to the lighter or barge is complete. This depends a good deal upon the contract made. In the case of the cargo sold to Mr. Waring, the risk was upon the owner until the salt was delivered from the
120 ship in the bay.

7. To 7 direct in. he says: When the parties pay for salt or other articles delivered, a receipt is given in the usual form, signed by the party receiving the money. I have no copy of the receipt given to Mr. Waring.

8. To 8 direct in. he says: I know no other matter or thing that would benefit the defendants in this cause.

To the cross-interrogatories propounded to Daniel McNeil, he deposes and says as follows, to wit:

Cross-in. 1. To 1 cross-in.: I am a member of the board of common council of the city of Mobile. I am a member of several committees, but of none to which matters of law and litigation is referred; I have not been advised with or consulted in relation to this litigation; have not expressed any opinion on the merits of the controversy; I have approved, so far as voting in approval, of the general taxation ordinances. I should prefer to have these interrogatories propounded to some party not a member of either of the boards.

2. To 2 cross-in. he says: My agency in regard to salt ceased when delivered from the ship in the bay; the salt was delivered to the purchaser in the bay, about twenty-five or thirty miles from the city.

3. To 3 cross-in. he says: I was consignee of the salt, and was acting for the shipper in England, but know nothing of what was
121 done with it after the delivery in the bay to Mr. Waring; he received the salt from the ship, and by his direction it was then disposed of; I know not how.

4. To 4 cross-in. he says: The salt was sold to Mr. Waring before the unlading of the vessel, and before it was entered for duty at the custom-house; before permit to unlade was obtained; before bulk was broken, and before preparation to unlade had begun.

5. To 5 cross-int. he says: The duty upon salt is ascertained by the invoice, certified by the American Consul at the port of shipment. The custom-house officers usually weigh a part of the cargo on the deck of the ship, and thus returns are made, after deciding upon the average weight; at the time of such weighing the consignee is still the owner of such salt.

6. To 6 cross-int. he says: The permit is granted by the collector or deputy collector; the cargo can not be unladen without this permit; such permit is sent on board by any reliable person going down to the shipping, and handed to the discharging officer before breaking bulk.

7. To 7 cross-in. he says: The port of Mobile is the place where vessels discharge cargoes destined for Mobile.

8. To 8 cross-in. he says: No case of loss ever occurred in any transaction between Mr. Waring and myself relating to salt.

9. To 9 cross-int. he says: To the consignee; the invoice is produced to the custom-house, usually accompanied by a consular certificate.

10. To 10 cross-in. he says: I do not know whether all vessels laden with salt, that enter the bay, unlade their cargoes there or not. It depends entirely upon the vessel's draft of water; the bills of lading fix the point of delivery. It is generally understood that vessels are to discharge their cargoes after being entered
122 inward. Cargoes for the port of Mobile are delivered in the bay, or landed on the wharf at the city. Ships loading cotton to be carried from Mobile, sometimes take a part of the cargo on board at the wharf, and if of too much draft of water to complete, proceed to the bay, there to finish loading; goods from Liverpool or New York are sometimes delivered to the consignees at the city, and sometimes in the bay. The shipper bears the charge of transportation between the ship's anchorage in the bay and the wharf at Mobile, in most cases, but not all. I know of no other matter or thing that would benefit the plaintiffs in this suit.

DANIEL McNIEL.

In my answer, I believe I stated that salt was usually weighed on the ship's deck, before delivery. I now learn from the custom-house, the usual mode is to weigh in town; would like to make this correction, based upon the report of the custom-house officers.

DANIEL McNEIL.

Feb. 7, 1867.

It is agreed the above may be attached to the deposition of Daniel McNeil, as a part of his testimony in this cause.

HAMILTONS,
For Compl't.

I, Dan'l P. Bestoo, one of the commissioners appointed to take the testimony of Daniel Wheeler and Daniel McNeil, witnesses in the above cause, do hereby certify that said witnesses appeared before me on the 5 day of February, 1867, the former at the office of Daniel Wheeler & Co., in the city of Mobile, and the latter at my office in said city; that the said witnesses were duly sworn by me, to speak the truth, the whole truth, and nothing but the truth, that they testified as is set down above, that the testimony was by me reduced to writing, and that it was subscribed by the witnesses respectively in my presence, after having been first read over to them; said witnesses are personally know to me to be the persons represented.

DAN'L P. BESTOO, *Commissioner.*

123 *Dec etal order:*

At Chambers, in vacation, on the 13 day of August 1866, at Tuskegee, the following order was made in this cause.

MOSES WARING
vs.
THE MAYOR, ALDERMEN AND COMMON Council of the city of Mobile, *et at.*

This cause was submitted to me in vacation on the 6th inst., in accordance with a notice theretofore duly given, on a transcript of the bill and answers, and a motion of the defendants, the Mayor, Aldermen and Common Council of the city of Mobile, to dissolve the injunction heretofore granted on the ground: 1. Of a want of equity in the bill, and 2. Because of the denials of the answer of said defenddants, and said motion having been held over for consideration. It is now, on consideration thereof, and of the arguments of the several solicitors of the respective parties submitted therewith, ordered, adjudged and decreed, that the said motion be overruled and denied.

And it is further ordered that the said, the Mayor, Aldermen, and Common Council of the city of Mobile, do pay the costs of the said motion to be taxed by the register, and for which if necessary an execution may issue.

(Signed) N. W. COCKE,
Chancellor So Division.

Note of evidence.

At a term of the Court of Chancery, begun and held on the fourth Monday of January A. D. 1867, the Hon. N. W. Cocke, chancellor presiding, and on the 7 day of February, 1867, being a day of said term, the following note of evidence was made in this cause.

MOSES WARING
vs.
THE MAYOR, ALDERMEN AND COMMON Council of the city of Mobile.

The following note of the evidence was made in this cause.

I. For complainant.

124 Depositions of James Crawford, William F. Cleveland, A.

Farris, C. H. Minge, Chandler Smith, George W. Owen, John Fowler, A. J. Ingersoll and Julius Hesse.

II. For defendants.

Depositions of Daniel Wheeler, Daniel McNeil, J. C. Colsson, Samuel S. Warner, William Cottrill, Charles Lyons, and Martin Robbins.

Attest: JNO. M. TAYLOR, *Register.*

Decree Final.

And on the 8 February, 1867, being another day of said term, it was ordered and decreed as follows in this cause.

MOSES WARING
vs.
THE MAYOR, ALDERMEN AND COMMON Council of the city of Mobile.

This cause is submitted at the term for a final decree on the bill, answer and testimony, and on consideration it is ordered, adjudged and decreed, that the complainant is entitled to the relief prayed for in the bill, and that the injunction heretofore granted be made perpetual.

It is further ordered that the costs of this suit be paid by the defendants, for which if necessary execution may issue.

(Signed) N. W. COCKE,
Chancellor.

Agreement of counsel.

In this case it is agreed that an appeal may be taken by either party to January term of Sup. Court, without further notice.

P. H. *for Comp't.*
S. & H. *for Deft's.*

Order granting appeal.

AT RULES, REGISTER OFFICE,
11 *February, A. D.* 1867.

This being a regular rule day of said court, the following order was made in this cause, to wit:

125 MOSES WARING
vs.
THE MAYOR, ALDERMEN, AND COMMON COUNcil of the city of Mobile.

In this cause, on motion of the defendants, the Mayor, Aldermen, and Common Council of the city of Mobile, and in accordance with the agreement of the council for both parties on file, it is ordered that an appeal be granted the defendants from the decree of this

court, rendered at the January term thereof, 1867, and returnable to the present term of the Supreme Court of this State, upon their giving bond in the sum of five hundred dollars, with security to be approved by the register of this court, and conditioned to prosecute the said appeal to effect and satisfy such decree as the Supreme Court may render in the premises.

JNO. M. TAYLOR, *Register.*

Appeal Bond.

STATE OF ALABAMA, *Mobile County.*

Know all men by these presents, that the Mayor, Aldermen, and Common Council of the city of Mobile, and Caleb Price and John Parham, are held and firmly bound unto Moses Waring, his heirs, executors and administrators, in the sum of five hundred dollars, for the payment of which, we jointly and severally bind ourselves, our heirs, and administrators, firmly by these presents. Sealed with our seals and dated this 14th day of February, 1867.

The condition of the above obligation is such, that whereas, the above bounden Mayor, Aldermen, and Common Council of the city of Mobile, have this day applied for and obtained an appeal returnable to the January term, A. D. 1867, of the Supreme Court of Alabama, to supersede and reverse a decree recovered by said Moses Warring against the Mayor, Alderman, and Common Council of the city of Mobile, at the January term, A. D. 1867, of the Court of Chancery for the first district of the southern chancery division of said State, at Mobile, perpetually enjoining the said Mayor, Aldermen, and Common Council of the city of Mobile as prayed
126 in the bill of complaint on file in said cause:

Now, if the said Mayor, Aldermen, and Common Council shall prosecute the said appeal to effect and satisfy such decree as the Supreme Court may render in the premises, then this obligation to be null and void, otherwise to be and remain in full force and effect.

J. M. WITHERS, [SEAL.]
Mayor, &c.
CALEB PRICE. [SEAL.]
JOHN PARHAM. [SEAL.]

Attest:
WHITFIELD TURNER, *City Clerk.* [L. S.]

Approved and filed, Feb. 14, 1867.

JNO. M. TAYLOR, *Register.*

THE STATE OF ALABAMA, *Mobile County.*

I, John M. Taylor, register in chancery for the first district of the southern chancery division of said State, do hereby certify that the foregoing one hundred and twenty-one pages contain a true, full and complete transcript of the records and proceedings had in a cause pending in said Court of Chancery, wherein Moses Waring is com-

plainant, and The Mayor, Aldermen, and Common Council of the city of Mobile, and John Parham, tax collector of said city are defendants, as the same remains of record in my office.

In testimony whereof, I have hereto set my hand and affixed the seal of said Court of Chancery, this 22d day of February, A. D. 1867.

[SEAL.] JNO. M. TAYLOR, *Register.*

Tax fee paid, no stamps on hand and none furnished.

J. M. T.

On the body of this transcript is endorsed the following:
Filed February 26, 1867.

PHELAN, *Clerk.*

127 *A copy of the assignment of errors.*

In Supreme Court of Alabama, January term, A. D. 1867.

THE MAYOR, ALDERMEN, AND COMMON COUNCIL of the City of Mobile, *et al*,
ats.
MOSES WARING.

The appellants by their attorneys come and assign errors and say:

1st. That the court erred for not dismissing the bill for want of equity.

2d. The court erred in overruling the demurrer to the bill.

3d. The court erred in rendering a decree for the complainant.

4th. There is error as shown by the record.

WILLIAM BOYLES.
THOS. H. HERNDON.
Counsel for Appellants.

Submission of cause.

Supreme Court of Alabama, Friday, March 1st, 1867.

MAYOR, ALDERMEN, & C. C. OF MOBILE, *et al*,
vs.
MOSES WARRING.
1 div. 3,320.

Came the parties by their attorneys, and this cause having been argued at the bar, is submitted for a decision.

Opinion of Sup. Court.

Supreme Court of Alabama, Tuesday, June 4th, 1867.

MAYOR, ALDERMEN, AND COMMON COUNCIL of the City of Mobile, *et al*,
vs.
MOSES WARRING.
1 div. 3,320.

The following is the opinion of the Supreme Court of Alabama, delivered in this cause, by Byrd, J.

128 (I) The counsel for appellee insists that the city authorities

are claiming the right to assess against and collect from him taxes for a greater period than that authorized by law. However this may be, it is apparent, if the city has any right to assess and collect the tax claimed, it has a clear right to do so for a part of the period if not for the whole; and as the appellee refused to account at all and did not offer in his bill to account for any part of that period he is not entitled to maintain his bill on the ground that the city claimed more than it had a right to demand. The familiar maxim that he who seeks equity must do (or offer to do) equity, applies with full force to the case made by the bill. And this brings us to the consideration of the main point involved in the decision of this cause.

(II) The authority of the State to confer the power of taxation upon a municipal corporation is not questioned by counsel, nor do they question the constitutionality of the act under which the municipal authorities of Mobile were proceeding to assess the tax.

The point made by the counsel for appellee as we understand it is, that the act in question did not authorize the assessment of and collection of taxes on the amount of sales of salt bought and sold by appellee under the facts and circumstances shown by the evidence in this cause, or if it did, that then the act to that extent is unconstitutional.

Without intending to intimate an opinion, we remark that we are not aware of any principle of law or constitutional provision which would inhibit the State legislature from authorizing by law the assessment and collection of taxes upon sales of merchandise sold previous to the passage of the law, and if the ordinance went beyond the authority conferred by the act, to that extent it would be null and void. In our opinion the act and the ordinance adopted have a constitutional field of operation and are therefore valid.

129 It appears from the evidence, that appellee purchased the salt in the years 1865, '66, from the consignee's at Mobile. Some was contracted to be purchased after it left Europe, and before it arrived in the bay of Mobile; and a part was purchased after it arrived in that bay, and before it was entered at the custom house of the port of Mobile. Without stating all the facts proven by the testimony, we are satisfied that appellee was not the importer of the salt, within any legal or commercial meaning of that term. He bought from the importer or his consignee. A person who purchases goods from an importer, after they have been brought within the boundaries and jurisdiction of the United States, but before he pays duty on them, or they are delivered at the port of entry, and then transports them, at his own expense, from the place where they were when bought, to port to which they were consigned, cannot be held to be an importer. But the question arises whether under such circumstances and those in proof, the purchaser of an import is subrogated to the rights and immunities of the importer, or is the import, in the hands of such a purchaser, not liable to State taxation so long as it remains in unbroken packages in the hands of such purchaser. If not, then appellee had the right to retain and sell the

salt in unbroken packages, free from State taxation. But, whether he or the importer could be taxed on the money arising from the sales thereof we will not consider, as this case can be disposed of, without passing upon that question.

Vid: C. J. Taney's opinion in license cases, 5 How. These and kindred questions have frequently come under the consideration of the Supreme Court of the United States, and it is to be regretted that the members of that supreme tribunal have so often disagreed upon these questions, and have still left some of them in great perplexity, if not obscurity. Without attempting the fruitless task
130 of reviewing and reconciling those adjudications, we will content ourselves with a reference to those collated upon the briefs of the counsel in this cause, and with a few quotations from such as we prefer to follow, upon the question before us.

In the license cases, 5 How. 574, Taney, C. J., in his opinion, speaking of the question, decided, in the case of Brown *vs.* Maryland, 12 Weat, says: "When the commodity had passed from his ("importers") hands into the hands of the purchaser, it ceased to be an import, or a part of foreign commerce, and became subject to the laws of the State, and might be taxed for State purposes, and the sale regulated by the State like any other property." This rule, the Chief Justice approved and adopted, and I do not remember that, in any case, its correctness has ever been judicially questioned, McLean J., in his opinion, in the same case, says: "Under the decision of Brown *vs.* Maryland, it is admitted that the license acts cannot operate upon the right of the importer to sell. But, after the import shall have passed out of the hands of the importer, whether it remains in the original package or cask, or be broken up, it becomes mingled with other property in the State, and is subject to its laws." This rule was not questioned by any of the learned judges who delivered opinions in those vexed cases.

To entitle an import to exemption from State taxation, it must be in the hands or control of the importer or his agent, in unbroken packages or in the condition imported. If he breaks up the packages and offers the contents for sale, they become liable, even in his hands, to State taxation. If he sells them in unbroken packages, under the authority of the license cases and Brown *vs.* Maryland, they are liable to State taxation in the hands of the purchaser. The appellee not being the importer of the salt sold by him, it was liable to State taxation, and a fortiori, the proceeds of the sale thereof were liable.

131 It is unnecessary, under this view of the merits of the cause upon the proof, to consider the grounds of demurrer assigned against the equity of the bill, or the other questions argued so ably at the bar and on printed arguments furnished the court by counsel.

From the view we take of this cause, the decree of the chancellor must be reversed, and a decree here rendered dismissing the bill, at the costs of the appellee in this and the court below.

Decree of Sup. Court.

Supreme Court of Alabama, Tuesday, June 4th, 1867.

MAYOR, ALDERMEN, COMMON COUNCIL OF the city of Mobile, *et al.*
vs.
MOSES WARING. } 1st Div. 3320.

This cause came on to be heard on the record of the proceedings, and the decree of the Court of Chancery, sitting at Mobile for the first district of the southern chancery division of the State of Alabama, and was argued by counsel of both parties. The said Mayor, Aldermen and Common Council of Mobile claim to exercise the authority of collecting from the appellee, a citizen of Mobile, upon his business, certain taxes, under an act of the General Assembly of the State of Alabama, entitled "An act to incoporate the city of Mobile," approved 2d of February, 1866. The validity of said authority of said statute so claimed by said appellants is denied by appellee, because the same is repugnant to the Constitution of the United States, paragraph 3, section 8, article 1, and the laws of the United States in pursuance thereof, and also because the same is in
132 violation of paragraph 2, section 10, article 1, of said Constitution; and this is the question directly presented for the consideration and judgment of this court; and the same being duly considered by the court, it seems to the court now here, that said provision of said statute and said authority so claimed by said appellants, are not repugnant to said Constitution and laws of the United States.

It is therefore adjudged and decreed, that the decree of the said Chancery Court be reversed, and this court proceeding to render such a decree as should be rendered in the premises, doth order, adjudge, and decree, that the bill of said Moses Waring, complainant below, be dismissed at the cost of said appellee in this court and in said Chancery Court.

STATE OF ALABAMA, *Supreme Court*:

I, John D. Phelan, Clerk of the Supreme Court of the State of Alabama, do hereby certify, that the foregoing one hundred and thirty-two pages contain a true, full and complete transcript of the record and proceedings in a cause pending in said Supreme Court, wherein the Mayor, Aldermen and Common Council of the city of Mobile, and John Parham, Tax Collector of said city of Mobile, are appellants, and Moses Waring is appellee, as the same remains of record in my office.

In testimony whereof, I have hereto set my hand and affixed the seal of said Supreme Court, this 10th day of October, A. D. 1867.

[SEAL.] JNO. D. PHELAN, *Clerk*.

[$2 State stamp.]

Supreme Court of the United States.

MOSES WARING,	*December Term*, 1868.
vs.	*WRIT OF ERROR*
MAYOR, ALDERMEN	*FROM THE*
AND	*SUPREME COURT*
COMMON COUNCIL OF MOBILE, ET. ALS.	*OF ALABAMA.*

Supreme Court of the United States.

MOSES WARING,
vs.
MAYOR, ALDERMEN
AND
COMMON COUNCIL OF
MOBILE, ET. ALS.

December Term, 1868.
WRIT OF ERROR
FROM THE
SUPREME COURT
OF ALABAMA.

Moses Waring is a merchant, resident and doing business in the city of Mobile. He is chiefly engaged in the salt business in that city and port. All the salt that enters into the trade of that city is of foreign production, and is mainly brought from the port of Liverpool, in the Kingdom of Great Britain, in vessels engaged in the foreign trade of that port.

Vessels engaged in European commerce, uniformly discharge and receive their cargoes in the Bay of Mobile, at their anchorage, distant 25 to 30 miles from the city. They receive their cargoes from the city in lighters, and discharge their cargoes for the city into these same lighters, which, being of lighter draft, are fitted to navigate the shallower waters of the upper bay, and transport goods and merchandise to the wharves of the city.

Mr. Waring is the owner of one or more barges, fitted for the transportation of salt; cargoes of that article are generally delivered from the ship into one of these barges, and by them are transported to the city. These barges are towed by steamers from the vessel to a wharf in the city, owned by Mr. Waring. Their cargoes of salt are then unladen on to the wharf.

Salt is imported from the foreign port in sacks, containing usually about —— bushels. When unladen at this wharf from the barge, the salt is weighed by Custom-house weighers, in order to ascertain the amount of duty to be paid to the United States. The duty is thus ascertained, and then paid to the proper officer of customs.

The salt is then stored in a warehouse, rented by the plaintiff, and by him sold and delivered to the purchaser, from the said warehouse. His sales are always in the original package, unbroken, and in the same form and condition as by him received from the vessel of importation, and in quantity of 20 sacks and upwards.

The course of the plaintiff in his business is this: Salt usually comes to the port of Mobile laden on account of the ship and owners which carried it. Sometimes the consignees at Mobile, correspondents of the ship owner, are advised beforehand, by mail, of the salt to arrive by the ship. Sometimes these consignees are advised of the salt only upon the arrival of the vessel upon which it is laden, in the bay of Mobile. The plaintiff sometimes contracts for the purchase of the salt, to arrive, and while the same is at sea, on the voyage to Mobile. Sometimes he contracts for the purchase of the salt, after the vessel on which it was laden has entered the Bay. In all cases, however, he acquires the salt by purchase, before it reaches the limits of the city of Mobile, before the duties are paid or ascertained, and before the vessel's hatches are opened, and before the cargo is unladen therefrom. Said salt is always delivered to and received by him in the Bay of Mobile some 25 or more miles from the city and its wharves, and is by him transported to the city at his expense and risk.

In 1866, the corporate authorities of the city of Mobile, by municipal ordinance, required the payment to the city treasury of a tax from all merchants and dealers of 50 cents on the hundred dollars, of the gross proceeds of all sales of goods and merchandise in the city, excluding sales of cotton.

The city officers sought to coerce from the plaintiff the payment of their per centage tax upon the gross proceeds of his sales of salt, received in the above stated manner and form.

Mr. Waring disputed the legality of the demand, and applied to the Chancellor for his restraining process, upon the ground that this exaction from him was illegal, under par. 3, sec. 8, art. 1, and par. 2, sec. 10, art. 1 of the Constitution of the United States, and of the laws of Congress thereunder. The Chancellor

sustained the objections of Mr. Waring, but, on appeal, the Supreme Court of Alabama sustained the validity of the authority claimed by the city corporation to levy this tax, under its charter from the State, reversed the decree of the Chancellor, and dismissed the bill of complaint.

The matter to be decided by this Court lies within a very narrow compass.

The Constitutional provisions are: "Congress shall have power to regulate commerce with foreign nations"

"No State shall, without the consent of Congress, lay any imposts or duties, on imports or exports, except what may be absolutely necessary for executing its inspection laws."

Congress has legislated upon this subject of the importation of salt—13 U. S. statute 202, 203. It has also legislated upon Mobile as a port of entry.

2	U. S. Statute	254.
3	ibid.	35.
	Ibid	663.
4	ibid.	482.

The question is, can the State of A'abama, in the face of these provisions of Constitution and law, either directly or indirectly, authorize interference with this salt, or its proceeds, situated as this record shows the salt to have been.

This Court has decided, in the cases of Brown *vs.* State of Maryland—12 Wheat. R., 419—and Almy *vs.* State of California—24 How. R. 169—that under no form or pretence can any State levy any tax upon an article imported into or exported from that State; that all such proceedings by the State are absolutely null; that till articles imported from abroad have lost their character of "an import," and have become incorporated with the great mass of property, within the State, they are not subject to the jurisdiction of State authority. The plaintiff in error rests upon the doctrine of these cases, and contends that, on the facts of this case, the right of interference by the State of Alabama, or by any officer deriving authority from its enactments, had not arisen, as to this property or its proceeds.

This salt is a product of a foreign country; is imported from that foreign country, under the authority and regulation of the laws of the United States. While in the hands of this plaintiff it remained in the original package as received by him from the officers of the United States, undisturbed and unbroken, and was dealt with by him entirely in that form; and in that form passed it from his hands by sale to the dealer. It ceased to have the

form of an import, and became a part of the great mass of the property of the State, only when it passed from his hands; till then it, and its proceeds, are protected by the laws of the United States.

This conclusion of the plaintiff inevitably results from the principles of the above decisions, unless *some essential* distinction can be pointed out between his case and those on which these decisions were made.

The only distinction that has been or can be suggested, is that Waring is not the *importer* of the salt; and upon that assumption, it is alleged, that in his hands it has passed from under the protection and exclusive operation of the laws of the United States, and has become subject to the jurisdiction of the State. That *distinction*, if valid, confines the operation of the National Authority, and its protection *to the person*, of the party acting, and *not to the property*, with which he acts.

But such is not the language; and still less, it is contended, is it the meaning of the Constitution? This is the plaintiff's case before this Court.

The language of the Constitution is—"imposts or duties, on *imports or exports*"—not importers or exporters; it looks to the thing, and not to the person dealing with that thing.

The question, then, is, was this salt in the hands of this plaintiff, an import, or had it lost that character? At one time it certainly was *an import*. It was the production of a foreign country, and had been brought from that foreign country, and into the jurisdiction of the laws and authority of this country. In the course of this transportation from that country, and pending its introduction into this as a portion of the common mass of property here, it was within the jurisdiction of, and this introduction, was regulated by the laws of the United States. Those laws so acting, and while so acting, were of necessity of exclusive authority over the subject. Had that exclusive authority ceased? If not, of course the laws of the State were inoperative upon it. If they had ceased, when had they so ceased? Unless they ceased before the duties were ascertained and paid, the salt still remained an *import*. One object of this national jurisdiction over the article was to secure such duty as Congress might levy upon it; so that it demonstrably follows that

all the duty was ascertained and paid, the salt was in no way subject to the State laws. But at the time of ascertaining and paying the duty, and before that time, it was the property of the plaintiff.

It cannot be disputed, then, that at the time it came into his hands it was an *import*, and an import into Alabama from a foreign nation; and if so, then the State of Alabama had no power to lay any import or duty upon it whatever. So that, whether Mr. Waring so called it an import or not, it is of no consequence; in his hands the property was *an import*, and ex io termini, under the prohibition of the Constitution, freed from all claim of authority by the State for purposes of taxation.

On the proof, Mr. Waring became the owner of the salt, and it became at his risk before the voyage of importation was complete. In all cases, whether his contract was made while the vessel was at sea, or after its arrival in the Bay of Mobile—in all cases, he was to receive the salt in the Bay, on the water, from the ship's side, into a lighter, at the distance of 25 or more miles from Mobile. From that point, the salt was transported by him, at his expense and risk, to the city of Mobile. This point, where he received the salt, is miles distant from the city of Mobile, from any wharf where it could be landed, and from the Customhouse, and from the place where its weight, and, consequently, the duty thereon, was to be ascertained. His risk began beyond the limits of Mobile, and the property had still miles of transportation before it reached its point of destination, so that the voyage was incomplete—and if the voyage were incomplete, the goods still remained an "import" at the time at which Mr. Waring's property and risk began, and so continued an "import," that is, a thing from abroad, in the condition of being imported into this country, under the requirements of the National laws, until some time after that risk and property began. During all this time, this property was kept constantly and distinctly separated and marked from the general mass of property in the State of Alabama.

But more than that, the plaintiff acquired his interest while the property was still in the original instrument of importation, that is, the ship or vessel—it was before she was unladen—before her hatches were taken off for un-

loading, and frequently, if not always, before the vessel was entered at the Customhouse. The money for the payment of duties was obtained from him, or advanced for his account.

It is confidently maintained on these facts that the voyage was not completed at the time the salt became the property of the plaintiff, it was still in transitu, and still in progress of importation.

As to the actual completion of the voyage: the cargo had not reached its port of destination, which was the port of Mobile. It was in the Bay of Mobile, twenty-five miles from the port, and to that port it must come by its destination, and by the law; it could not have been landed at any point on the Bay, other than this port, and till this landing was made, and the other requirements of the law accomplished, it was in the custody of an officer of the customs.—See Andrews' Rev. Laws, §62, 63, 1 U. S. Stat. 639, 3 Pet. R. 303, 304.

The Bay of Mobile is in the collection District of Mobile —2 U. S. Stat. 254—and the President was authorized to establish *such place within the District* as he should deem expedient, to be *the port of entry and delivery* thereof.

He established St. Stephens to be that port.

This District was changed by legislation (3 U. S. Stat. 35) and Mobile made the *sole port of entry.*

Changes have from time to time been made in the limits of the District (3 Ib. 663, 4 Ib. 482) but Mobile remains the *sole port of entry,* and there is the Customhouse, and there must the entry of the cargo of all foreign ships be made.

When the goods arrived in the city of Mobile, that is, at the port of entry, they were the property of this plaintiff, and in his custody, subject to the lien of U. S. for duties, and subject to the possession of the custom officers for the security of their lien. Till then the voyage was incomplete.

This result is sustained by U. S. *vs.* Vowell, 5 Cranch R. 368. A cargo of salt, destined for Alexandria, came to anchor 23d December, 1807, in the Potomac, sixteen miles below the town and port of Alexandria, but did not arrive at the Port till 1st January, 1808. The duty on salt expired on 31st December, 1807. The question was, whether or not the cargo was liable to the duty. The U.

S. contended that the vessel having arrived in the collection District, before the act had expired, the cargo must pay the duty. The owner contended the salt was in transitu, and the voyage not completed till 1st January, when the vessel reached the port; and so the Court held, because the importation *was not completed* till that date, and till after the act imposing the duty had expired.

In Arnold *vs.* U. S. 9 Cranch R. 104, the same rule was applied. Here there was an increased duty between the time of the cargo arriving within the collection District, and its arrival at the port. The cargo was held liable to the increased duty, because till such arrival at the port of delivery the voyage of importation *was incomplete.*

The cargo arived on the vessel within the waters of the United States on 30th June, 1812, within the collection District on 1st July, and the entry was made at Providence, the destined port of entry, on 2d July, 1812. The increase of duty was declared by act 1st July, 1812. The owner argued that the property having arrived in the United States before the passage of the act, the duty existing under the previous law, was all that could be collected.

Story, J., remarked "we have no difficulty in overruling this argument. To constitute an importation, so as to attach the right to duties, it is necessary, not only that there should be an arrival within the limits of the United States, and of a collection District, but also within the limits of some port of entry.

In Meredith *vs.* United States, 13 Peters R. 494, the same rule is announced.

The necessary conclusion from these decisions is, that at the time this plaintiff became the owner of this salt the voyage of importation *had not been completed*, and consequently the goods were then "*imports*," entirely distinguishable and segregated from the mass of property subject to the operation of the laws of the State.

It is believed no case is to be found which at all impairs the propositions thus far advanced, and the conclusions drawn from them. The case of United States *vs.* Lyman, 1 Mason R. 481, has been urged as inconsistent with this argument. But, not so. The question there was, whether the United States were confined, as to their right of duty.

to their remedy on the bond for duties, which had been given by the vendee of the owner of ship and cargo, upon 500 chests of tea imported into Boston, or whether they had an additional right of action against the original importer. The fact was, the vessel and cargo had arrived at its port of destination, and had been entered at the Customhouse; this was on the 2d July, 1816. On the 8th July, this tea was purchased by another party, and in accordance with the custom of the port, this purchaser gave his bond for the duty. He failed in business, and the bonds were not paid. The United States then sued the original importer for the duty, and it was held that he was liable for the duty, as a statutory debt.

That judgment is not impugned in this discussion, and the result, so far as this case is concerned, is simply, that the sale to Waring of this salt, would not release his vendor from the payment of the duty if Waring failed to pay it. That proposition, however, does not weaken our position. We freely admit that the obligation still remained on Waring's vendor to see that this duty was paid. Our case is not impaired by the admission that Waring was not the importer, as technically defined for *revenue purposes* by the acts of Congress,—(1 U. S. Stat. 673,)—so that he could himself, in his own name, make entry of the goods at the Customhouse; still there is no prohibition against his becoming a purchaser during the voyage of importation, and the full protection of his title against even the United States seeking to subject the property to payment of a debt by the technical importer.—1 Peters R. 386, 6 Ib. 262.

It is believed, therefore, that the above considerations, and the authorities upon which they are based, are conclusive to show that these goods, in the hands of this plaintiff, remained "imports" up to and at the time they passed from him by sale, in the manner in which he sold them, that is, in the original unbroken packages.

We therefore contend that whether the plaintiff is or is not the importer, under the definition of the act of Congress, is a matter of perfect indifference, and that the decision of the Supreme Court of Alabama, which places the liability of this plaintiff to this city taxation upon the ground that he was not the *importer*, and that as he acquired his property after the time when the goods

arrived within the territorial limits of the State of Alabama, he is liable to this demand, is utterly untenable.

It is respectfully submitted that our position is abundantly maintained by the decision of this Court, and that in truth no other result can rightly be attained upon the Constitutional declaration, "*No State shall lay any imposts or duties on imports or exports*"; that exemption from State interference is secured to *the article*, and is not affected by the *character of the party* dealing with it.

No case is to be found in the books where this proposition is impeached. All admit that "*imports*" are beyond the pale of State legislation. The attempts which have been made were to escape this exemption, by framing a tax that should operate on the person, or upon some incident of the business, and which could be distinguished from the import itself. Thus in Brown's case, the attempt was to tax the busines by a licensse demanded of the person. In Almy's case, the attempt was, to tax the usual evidence of the transaction by a stamp upon the bill of lading. Neither attempt succeeded, and for the very sufficient reason that the whole subject was beyond the limit of State jurisdiction for any purpose. This limitation of State power arises from the subject itself, because the power to regulate is confided to Congress alone in the grant to "regulate commerce," and as sustained by the correlative prohibition on the States to lay duties, and because the power of the State to tax extends only to matters which exist by its authority, or are introduced by its permission.—McCulloch *vs.* Maryland, 4 Wheat. R. 316.

No one can pretend that this property, while in the Bay of Mobile, exists by State authority, or was introduced into the State by its permission. The whole subject was beyond the power of the State for any purpose.

In accordance with the spirit of the former cases, the attempt here is to escape the prohibition by fixing attention upon the character which the plaintiff bears in the transaction, and insisting he is not the "importer," and that therefore the property in his hands is not protected from State taxation.

Our proposition is that the protection is to the article, and not to the person; that this salt, all the while it was in the plaintiff's hands, was an "*import*," within th

meaning of the Constitution, and therefore not the subject upon which the State laws could operate.

An examination of the decisions and reasoning of this Court fully vindicates the plaintiff's proposition.

In Brown's case—12 Wheat.—the test applied by the Chief Justice was, whether the tax operated upon the foreign goods before, or after, they had become mixed up with and formed a part of the great mass of property in the State. Till they reached that condition, and so long as they could be pointed out and distinguished from that great mass, as articles connected with commerce, foreign to the domestic trade of the State, they were *imports*, exempt from State jurisdiction, and protected by the Constitution of the United States. Mr. Justice Thompson doubted, because the tax there was by way of license fee demanded of the person, and he drew a distinction between the article and the person. His doubt obtained no sanction with the Court, and the distinguished counsel, who appeared for the State, afterwards as Chief Justice of the Court, announced his conviction of the propriety of the rule, which as counsel he had so earnestly opposed, (5 How. Rep. 575,) and stated he did not see how the line could be more accurately drawn—"that goods imported, while they remain in the hands of the importer, in the form and shape in which they were brought into the country, can in no just sense be regarded as a part of that mass of property in the State, usually taxed for the support of the State Government." The same approval is stated—24 How. R. 169—and it is clear that if the question had been upon the taxing power of the State, and Pierce had been in the condition of an importer, though through the Boston merchant, the validity of his claim of exemption would have been sustained.

In these several cases, it is true, the importer is frequently named, and his possession of the goods is referred to, but it is equally true that such possession was an accidental circumstance connected with the discussion and grew out of the fact that in these the technical importer was before the Court. That circumstance, however, was accidental, and *not essential*. The essential fact to be decided was whether the goods had become mixed with and formed a part of the great mass of pro-

perty in the State, or still *remained a part of the foreign commerce* of the country. Whenever this last condition exists, the goods are under the laws of the United States, and the protection of the Constitution, and must so continue till the article has lost its distinctive character of an import. The Court refuses to lay down any other rule, and leaves particular cases for future decision, but declares that "*any charge upon the introduction and incorporation* of the articles into and with the mass of property in the country must be hostile to the power given to Congress to regulate commerce, since an essential part of that regulation, and principal object of it, is to prescribe the regular means for accomplishing that introduction and incorporation."

In further support of this argument, we refer to the case—3 Peters R. 292—and the doctrine of the Court there announced.

An attachment was levied by a State officer upon goods imported, but before entry and payment of duties. The levy and proceedings were held to be a nullity, because the goods were in the custody of the laws of the United States.

So here the property was acquired by plaintiff while under the protection of United States laws, and it was an "import," and ceased to be a part of the foreign commerce of the country, and became incorporated and mixed up with the great mass of the property in the State, only after it had passed from the hands of this plaintiff. If this proposition has been sustained in this argument, the decision of the Supreme Court of Alabama must necessarily be reversed.

P. HAMILTON,
of Counsel.

Supreme Court of the United States.

DECEMBER TERM, 1868.

MOSES WARING,

vs.

THE MAYOR, ALDERMEN AND COMMON COUNCIL OF MOBILE, ET AL.

Writ of Error from Supreme Court of Alabama.

Supreme Court of the United States

OCTOBER TERM, 1955

No. 515

MOBILE, ALABAMA,

vs.

THE MAYOR, ALDERMEN AND COMMON COUNCIL OF MOBILE, ET AL.

Writ of Error from Supreme Court of Alabama.

Supreme Court of the United States.

DECEMBER TERM, 1868.

MOSES WARING,

VS.

THE MAYOR, ALDERMEN AND COMMON COUNCIL OF MOBILE, ET AL.

Writ of Error from Supreme Court of Alabama.

The city of Mobile is situated on the west bank of the Mobile river, a short distance above its entry into the bay of Mobile. The bay of Mobile stretches to twenty-eight or thirty miles below the city, and is connected with the Gulf by a narrow strait. The town of Mobile, by an act of Congress passed 22d July, 1813, (3 Stats., 35, § 3,) was designated as the only port of entry for a collection district bounded by West Florida on the east, and Louisiana on

the west, and comprising the bays, inlets and rivers emptying into the Gulf. The bay of Mobile is a port of this district. Large vessels coming to Mobile anchor about twenty-five or thirty miles below the city, and are unladen there upon lighters, which bring their cargoes to the city. The principal commerce of the port consists in the export of cotton. Vessels coming from Great Britain for a cargo frequently bring a cargo of salt, as ballast, and to pay the expenses; and cargoes of this kind are generally sold in advance of their arrival, or as soon as they reach the bay, before bulk is broken, or they are unloaded.

The plaintiff in this cause is a vendor of foreign salt thus imported. He makes his purchases of the entire cargo, before arrival, or while the vessel is in the lower bay, and brings it to the former town, and present city, of Mobile, where it is weighed, and the duties are settled and paid. The consignee of the vessel sells to him the cargo, and acts as his agent in the entry at the Customhouse, and in the payment of duties. In the year 1866, the corporate authorities of Mobile imposed a tax upon all sales of merchandise in that city, and claimed of Mr. Waring a tax upon the sales of salt that he had made for six months preceding the date of the ordinance, under its conditions. He objected, that the salt disposed of by him was an import from a foreign country, and that the sales made by him were made in the original packages, and to merchants and traders, in large quantities, for re-sale; and that, under the Constitution and laws, he was not liable for taxation, and declined to comply with the ordinance.

The Mayor, and defendant, Withers, by a somewhat martial proceeding, caused him to be arrested, confined, and imposed a fine of fifty dollars for one day of delay, and was proceeding to renew this prosecution from day to day, when he was enjoined. The Chancellor determined that the tax was illegal. The Supreme Court, on appeal, held

that it was legal, and the cause, upon this judgment, is brought before this Court, under the 25th section of the Judiciary act. The opinion of the Supreme Court is in the record, and from it we learn that they do not regard the plaintiff to be an importer, and that the constitutional prohibition upon the States to levy duties or taxes on imports has no application to him. The argument of the Court intimates that if the consignee of the vessel in which the salt was imported had introduced it into the city of Mobile, as the plaintiff has done, deposited it in the warehouse, and sold it to the same persons, no tax might have been incurred; but that this exemption or privilege, if it exists, belongs to him, and that it is a specific and personal privilege, to which another cannot be subrogated. But the language of the Constitution is: "No State shall * * "lay any imposts or duties on imports or exports." The prohibition is universal, and applies to the thing imported, and has no reference to the person who may be the importer. This prohibition does not arise from any law, but is found in the Constitution, before the existence of any law under it. It is a prohibition which Congress cannot waive or impair, except under the condition that the tax or duty shall be paid into the common treasury of the Union, or be necessary for the execution of inspection laws.

The tax in this case was designed for municipal purposes, and had no reference to any inspection laws, and has no sanction from any consent of Congress.

In the leading case of Brown *vs.* Maryland—12 Whe., 419—the Supreme Court defined the terms employed in the Constitution. "An impost or duty on imports," (say the Court,) "is a custom or a tax levied on articles brought "into a country, and is most usually secured before the "importer is allowed to exercise his right of ownership "over them; because evasions of the law can be prevented "more certainly by executing it while the articles are in

"its custody. It would not, however, be less an impost "or duty on the articles, if it were levied on them after "they are landed. The policy, and consequent practice, "of levying or securing the duty before, or on entering the "port, does not limit the power to that state of things; "nor, consequently, the prohibition, unless the true mean- "ing of the clause so confines it."

The Supreme Court, in the preceding extract from their opinion, very clearly distinguish between the laws relative to the collection of duties, and the binding force and operation of the constitutional inhibition upon the States; and that the one is not to be measured or controlled by the other. The Court, in their opinion, proceeds to inquire, "What, then, are imports?" They say: "The lexicons "inform us, they are things imported. If we appeal to "usage for the meaning of the word, we shall receive the "same answer. *They are the articles themselves which are "brought into the country. A duty on imports, then, is not "merely a duty on the act of importation, but is a duty on the "thing imported.*" It is not, taken in its literal sense, con- "fined to a duty levied while the article is entering the "country, but extends to a duty levied after it has entered "the country."

The Supreme Court of Alabama have considered that the prohibition is confined to the act of importation, and that the concession of the Constitution is in favor of him who embarked the goods in the foreign port: that if the property is sold or disposed of in transitu, whether upon the broad ocean, or before the arrival of the vessel or cargo into the port of entry, the privilege of exemption is lost. Upon the landing of the cargo, subsequently to such a sale or disposition, it falls immediately under the operation of the State power of taxation. But this is manifestly erroneous. Such an interpretation would submit a very large portion of the foreign commerce to State taxation. For, at

the time the Constitution was made, when intercourse was much less rapid than now, the sales of cargoes and invoices of shipments, in transitu, must have been very common; and, with the use of the ocean telegraph, such instances must now be frequent. If the fact of sale by the importer has the effect, *ipso facto*, to mingle the import with the mass of property in the country, as soon as the property is landed, duties may be levied upon the property as soon as it is landed. Nor do I perceive any reason why, under such an interpretation, the duty may not be levied before the property comes within the limits of the United States. If the tax law was framed so as to embrace all purchases made of property by a resident, this tax might be levied. The answer of the Supreme Court of Alabama, in such a case, would be: "The importer is alone protected from "a duty. The importer is the shipper in a foreign port. "The exemption is personal to him, and for his exclusive "benefit. You are not the importer, and there can be no "'subrogation' of his privilege." The Supreme Court of the United States have afforded a reply to this argument, in the line I have quoted: "A duty on imports, then, *is* "*not merely a duty on the act of importation, but is a duty* "*on the thing imported.*"

At the time that the plaintiff in this cause made his purchases of this salt, the claim of the United States to duties had not arisen.

In some of the instances, his purchases were made before the arrival of the vessel within the jurisdictional limits of the United States. In none of the instances had the vessel arrived at the port of entry.

The port of entry is the town or city of Mobile, and when it was landed in the city, the salt was landed as the property of the plaintiff. Mr. Justice Story, in the case of the schooner Mary and cargo—1 Gall., 348—says: "I am "well satisfied that an importation into the United States

"means not merely a bringing within our jurisdictional "limits, but also a bringing into some port, harbor or haven, "with an intent to land goods there. * * * Upon "a careful examination of the case of the United States *vs.* "Vowell—5 Cr., 368—the Court evidently consider that "an importation into the United States did not mean an "arrival within the limits of the United States, or even of "a collection district, but within some port or harbor, with "an intention there to unload the goods." To the same effect is Meredith *vs.* United States—13 P., 486; Arnold *vs.* United States—9 Cr., 104.

The opinion of the Supreme Court of Alabama seems to have proceeded upon the judgment of the Circuit Court in Massachusetts, reported in 1 Mason, 482—U. S. *vs.* Lyman. The report shows an import into the city of Boston of an invoice of tea. After its arrival and entry, by the importer of the tea and the owner of the ship, at the Customhouse, the tea was sold to a third person, who was permitted to give the bonds for the payment of the duties. The purchaser failed, and suit was brought for the duties against the importer. The learned Justice instructed the jury that "An importation is complete as soon as the goods are "brought within any port, with the intention of being un-"laden or sold there. From whom, then, does the debt "accrue? Beyond all doubt, from the importer, be he the "owner or the consignee of the goods; for, by the express "provisions of the revenue act of 1799, the owner or con-"signee, or, in case of his absence or sickness, his factor or "agent, are the only persons to whom the law allows a "credit for the duties to be given at the Customhouse. "Immediately, therefore, upon the importation of these "goods, the owner or importer owes a debt to the Govern-"ment, which, independent of any security by bond, it has "a right to enforce upon the principles of the common "law."

The Court said: "If, in this case, Lovejoy had become "a purchaser or consignee while the ship was in transitu, "there might have been weight in the argument that he "had the right to enter the goods."

The case suggested by the learned Judge is the case of the plaintiff.

The same learned Judge, in the case of Knox *vs.* Devens —5 Mason R., 380—discusses at large the statutes of the United States upon the subject of the liabilities of importers for duties, and who are importers, in the purview of those statutes. The conclusion he attains is, that the consignee is the importer, and that he, and not the owner, is regarded at the Customhouse as the importer. In the cases of Cunard *vs.* Atlantic Insurance Company—1 Peters, 386; Cunard *vs.* Nicoll—4 Peters, 291; and Cunard *vs.* Pacific Insurance Company—6 P., 263,—the Supreme Court of the United States determined that a transfer of the goods might be made by a transfer of the bills of lading, and that the holders of those bills of lading were entitled to enter the goods in the Customhouse as owners. The Court, in the last mentioned case, say: "The plaintiffs were both "owners and consignees. The consignment of the home- "ward cargo was to order; and the plaintiffs, in virtue of "this assignment, and the endorsement and possession of "the bills of lading, and the other transactions stated in "the case, became consignees, as well as owners, of the "homeward cargo." Even under the act of 1799, entry in that case might have been made by the owner, in possession of such documents. But the act of 1823 is much more full, and under that act, the plaintiff in this case, by virtue of his purchases before the entry of the cargo, might, perhaps, have made the entry.

But the cases above mentioned, especially that in the 5th Mason, show that these provisions in the revenue acts had no relation to any right, or any exemption, or restraint,

created by the clause of the Constitution under review, but merely provided for the sure and responsible entries of merchandise, with reference to the interests of the treasury.

In the transactions of the Customhouse, the United States must have a certain and easily recognized person with whom to deal, in the adjustment of all the concerns connected with the importation of property.

The act of 1799 designated the consignee as the person who was to be regarded at the Customhouse as the owner and the importer in nearly all the cases.

The act of 1823 enabled the owners, as well as the consignees, of goods, to make the entry; and the decision would seem to imply that the owner, at any time previous to the arrival of the ship within the port or harbor of entry, might enter the merchandise at the Customhouse.

But, no matter what may be the construction of these acts, or the usage under them, we insist that they were all made with reference to other objects, and were not designed to affect the interpretation of the clause in the Constitution which prohibited taxation of imports by the States.

The imported article subject to duty, is liable to that duty, no matter who may be the owner.

If, by any chance, the duties are not paid, the United States have an action against him who was the owner at the date of the importation, no matter who he may be; and if the goods afterwards came into the hands of any party, with notice of the non-payment of the duties, that person is also responsible for them. But, so long as they remain in the condition of imports, as distinguishable from other property of the country, they are not subject to State taxation.

The American rule upon the subject of the liability of the owner, is the same as that which is found to exist in Great Britain. In England, the duties are usually paid on the entry of goods. When, by accident or mistake, the

goods are delivered without the payment of the duties, it becomes necessary to resort to those who incur the duty by the act of importation; and they are liable till the duties are paid; and every one who is owner, or interested in the goods, is so liable. And if the owner reside abroad, the factor within the Kingdom, having no interest but his commissions, is liable; and if several are jointly interested, the Crown may recover the duties of any one interested.—Manning, pr. of Exchequer, 203; Atty. Genl. *vs.* Stanforth Bunb., 97; Taylor *vs.* U. S., 3 H., 197; Meredith *vs.* U. S., 13 Pet., 486.

The Supreme Court of Alabama refer to the opinions of the late Chief Justice Taney and Mr. Justice McLean, in the license cases, to support their views. The Chief Justice, in that case, expressed his concurrence in the opinion given in Brown *vs.* Maryland.

The Chief Justice says: "Goods imported, while they "remain in the hands of the importer in the form and shape "in which they were brought into the country, can in no "just sense be regarded as a part of that mass of property "in the State, usually taxed for the support of the State "Government. The immense amount of foreign products "used and consumed in this country, are imported, landed "and offered for sale in a few commercial cities, and a very "small portion of them are intended or expected to be used "in the State in which they are imported. A great part "imported, in some of the cities, is not owned or brought in "by citizens of the State, but by citizens of other States, or "foreigners. And, while they are in the hands of the im-"porter for sale, in the form and shape they were introduced, "and in which they are intended to be sold, they may be "regarded as merely in transitu, and on their way to the "distant cities, villages and country for which they are des-"tined, and where they are expected to be used and con-"sumed, and for the supply of which they were, in truth,

"imported. And a tax upon them while in this condition, "for State purposes, whether by direct assessment, or indi- "rectly, by requiring a license to sell, would be hardly "more justifiable in principle than a transit duty upon the "merchandise when passing through a State. A tax in "shape upon imports is a tax upon the consumer, by en- "hancing the price of the commodity. And, if a State is "permitted to levy it in any form, it will put it in the "power of a maritime importing State to raise a revenue "for the support of its own government, from citizens of "other States, as certainly and effectually as if the tax was "laid openly, and without disguise, as a duty on imports. "Such a power in a State would defeat one of the principal "objects of forming and adopting the Constitution. It "cannot be done directly, in the shape of a duty on im- "ports, for that is expressly prohibited. And, as it cannot "be done directly, it could hardly be a just and sound "construction of the Constitution which would enable a "State to accomplish precisely the same thing under an- "other name, and in a different form."—License cases. 5 H., 575.

I have made this long extract from the opinion of the Chief Justice for the purpose of placing before the Court his exact views. This exposition of Brown *vs.* Maryland is worthy of the author, and might well be considered as a part of the opinion delivered in that important case. In this, as well as in the opinion given in that case, we find the firm purpose to maintain the constitutional prohibition in the fullness of its spirit. The case before the Court illustrates every part of it. The States of Mississippi, and portions of Tennessee and Georgia, depend upon Mobile as their port of importation.

Mississippi, to the whole extent of its maritime frontier, is attached either to Louisiana or Alabama collection districts. The levy of a duty upon salt in the hands of the

plaintiff, for the benefit of the State of Alabama, or the corporation of Mobile, would be a tax upon the consumers of the imports of salt into Mobile, whether in Alabama, Mississippi, Georgia, or Tennessee.

The course of trade in Mobile renders it more discreet in a merchant of that article to purchase in transitu, than to load the cargoes abroad. A ship coming direct from Liverpool to Mobile for cotton, comes generally in ballast, or with a cargo of salt, coal, or other bulky articles; their principal object being to obtain a return cargo. Purchases are more favorably made in such cases, perhaps, than by directly importing. The plaintiff is the principal dealer in this article in Mobile, and disposes of it for consumption more favorably than any other person. The thing in his hands is the thing imported. It is disposed of by him as it was prepared for sale and use. Through him it is distributed among the towns, villages, and interior country. If taxes are levied in Mobile upon it, the price is enhanced to the consumer. He owns it when it is entered, and when it is landed at Mobile.

The opinion of Mr. Justice McLean was also cited. This eminent Judge was never a hearty supporter of the opinion of the Court in Brown *vs.* Maryland, and in one of his opinions in the license cases, dissents from some of the doctrine laid down in that case, and limits the scope of the opinion to the precise case before the Court. He regards the importer who pays the duty as a purchaser of a license from the Government, and the only person in the purview of the Constitution and laws. But the Constitution has a broader and more comprehensive operation. Its purpose was, not merely to obtain a revenue for the United States; not merely to secure foreign commerce from conflicting regulations; but, also, to protect the citizens of all the States, and of every State, from the licentiousness of local legislation in dealing with commerce. There is an irre-

pressible desire among all legislatures, from the highest to the lowest, to relieve their immediate constituents from the burdens of taxation, and to reap their revenues in places in which they had not sown. But, the Supreme Court, as a corporate body, have maintained the case of Brown *vs.* Maryland in all of its signification. The Chief Justice and Mr. Justice McLean, in these license cases, were not in unison as to the application of their principles to imports.

In the case of Jones *vs.* Tibbetts—32 Vermont R., 481—which arose under the liquor laws of that State, the Court discriminates as we do. The Court say: "We regard "brandy, in the condition in which it came into the State, "and went into the hands of the defendants, to have been "the subject of legitimate sale, with which our statute was "not intended to interfere. * * * It will be kept "in mind that the sale of liquor in this State can be pro- "tected only while it is passing, in the original package of "importation, in such quantity as is prescribed in the acts "of Congress regulating its importation."

The opinions in the passenger cases have doctrines entirely in harmony with what we are contending for.

Justice Wayne says: "Can any one of the sovereign "powers of the United States be carried out by legislation "without acting upon the territory and sovereignty of the "States? This being so, Congress may say, and does say, "where a voyage may begin within the United States, and "where it may end in a State of the United States. "Though in its travel it enters the territory of a State, "the political jurisdiction of the State cannot interfere "with it by taxation in any way till the voyage has ended; "not until the persons who may be brought as passengers "have been landed, or the goods which may have been "entered as merchandise have passed from the hands of the "importer, or have been made by himself a portion of the "general mass of general property of the State."

The Chief Justice elucidates this opinion by affirming, in the license cases: "Undoubtedly, a State may impose a "tax upon its citizens, in proportion to the amount they "are respectively worth; and the importing merchant is "liable to this assessment, like any other citizen, and is "chargable according to the amount of his property, "whether it consists of money engaged in trade, or of "imported goods, which he proposes to sell, or any other "property, of which he is the owner. But a tax of this "description stands upon a very different footing from a "tax on the thing imported, while it remains a part of "foreign commerce, and is not introduced into the general "mass of property of the State." He supported the laws in question, because they did not operate upon the imported article, in the condition in which it was introduced, but only upon the retail trade.

In the case before the Court, it appears that Congress has determined where the voyages of the ships ended that introduced the salt into the United States. The voyage was to terminate at the town of Mobile. Before that, the property on board was not subject to the judicial action of the State Courts.—Harris *vs.* Dennie, 3 Peters, 293. Nor were they under the legislative power of the State for the purpose of taxation. The Constitution, not Congress, places a prohibition upon the exercise of such a power. When the thing imported came to the port of Mobile, it was the property of this plaintiff, and was protected in his hands by the same constitutional provision. As much so as the ship registered in New York or Great Britain, and coming to Mobile for a cargo, is protected from taxation, no matter what might be the length of their sojourn in the waters of the bay. Where either have become mingled with the mass of property in the State, they might be taxed as a part of that property.

We shall not consider any other question arising in this

cause, for the reason that the Supreme Court of Alabama dismissed the bill on the ground that the claim of the plaintiff, on the facts disclosed, was not protected by the Constitution. The Chancellor decided that the claim was well founded—that the jurisdiction of his Court was ample to grant the relief, and that it was his duty to grant it.

The question is fully presented in the record of the judgment of the Supreme Court, and falls within the scope of the 25th section of the Judiciary act of September, 1789.

J. A. CAMPBELL,

For Plaintiff.